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CURRENT TOPICS

Delegated Legislation

IT was announced in both the Lords and the Commons on 20th November that the Government are willing to hold an inquiry into the procedure for exercising Parliamentary control over delegated legislation, and that they would be ready to discuss immediately the precise form and scope of such an inquiry through the usual channels. The LORD CHANCELLOR stated that the number of officials possessing powers of entry had been reduced to 14,450, of whom 3,083 were persons empowered to enter private premises. That represented a reduction since before 1951 of 4,745 in the total number of officials with powers of entry and 2,905 in those empowered to enter private premises. VISCOUNT SAMUEL commented that the Lord Chancellor had announced with satisfaction the reduction of persons empowered to enter premises without a warrant, not to 200, nor 500, nor even 1,000, but 14,000. That, said Viscount Samuel, was a matter for a white sheet rather than a halo.

The Royal Commission on Marriage and Divorce

LAST week was a busy one for the Royal Commission on Marriage and Divorce. On 17th November the memorandum of The Law Society was submitted, with its practical proposals for amending the definition of desertion to prevent a short and not genuine return by either spouse from affecting the right to petition on that ground, for enabling a wife to obtain damages against an adulteress, for the abolition of proceedings for judicial separation and for the abolition of collusion as a bar to divorce. Sir SIDNEY LITTLEWOOD, solicitor witness for The Law Society, agreed with Mr. Justice PEARCE that the proposal to abolish collusion was sweeping, but said that at least it should be a bar only when the petitioner intended to deceive the court or abuse the processes of law. On 18th November Lord Justice HODSON submitted a memorandum in which he stated his view that divorce was an evil and destructive of family life, and some attempts should be made to prevent its increase. Without proposing that cruelty should be removed from the list of grounds for divorce, he considered that there had been a tendency among newly married couples who were getting on badly to accuse each other of cruelty and to be less ready to consider one another and adjust their differences. On 20th November the National Council of Social Service urged the necessity for the provision of education for home making and also for the deduction at source from the husband's income of sums owing under maintenance and affiliation orders. Mr. FRANK POWELL, the Family Welfare Association and the Sailors', Soldiers' and Airmen's Families Association, and the London Magistrates' Clerks' Association also submitted memoranda.

Unwanted New Cars

THE sudden drop in the amount of money in the pockets of the public and the tightening of credit facilities has caused a radical change in the question of supply of new cars. This is rendered even more dramatic by the heavy competition in foreign markets from French and German manufacturers.

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As regards an increasing number of makes, cars are now being taken out of the British Motor Trade Association covenant scheme and can be sold freely to the first comer. Very soon the question will arise, indeed, disputes are already developing, as to whether orders entered and accepted several years ago are capable of specific enforcement by the dealers against the public. If the agreements satisfy s. 4 of the Sale of Goods Act, there seems no reason why they could not be enforced, as the courts would hardly imply a "*rebus sic stantibus*" provision into the contracts. Deposits could be forfeited, but whether dealers would think it worth while to sue impecunious customers is doubtful, especially as it would involve a considerable loss of goodwill.

The Legal Aid and Advice Act, 1949 (Commencement No. 4) Order, 1952

WHEN the Court of Chancery of Lancaster Act, 1952, which permits the transfer of Chancery matters from the High Court to the Court of Chancery of the County Palatine of Lancaster on the application of any of the parties, was in Committee in the Lords on 21st July last, the LORD CHANCELLOR stated that transferred cases which had begun with Legal Aid should be continued with Legal Aid in the Lancaster Court. He indicated that the Treasury had signified their approval to the making of regulations extending the benefits of the Legal Aid Act, in connection with proceedings in the Chancery Court, to the County Palatine of Lancaster in, or in connection with, any cause or matter transferred thereto from the High Court. The above Order (S.I. 1952 No. 2005 (C.10)), made on 18th November and now published, provides that on 1st January, 1953, the following provisions of the Legal Aid and Advice Act, 1949, shall come into force: (*a*) ss. 1–6 (except s. 5) and Scheds. I, II and III, for the purpose only of making Legal Aid available in connection with proceedings in the Chancery Court of the County Palatine of Lancaster and proceedings before a person to whom a case is referred by that court; (*b*) s. 12, ss. 14–16, and s. 17 (1) and (2) in so far as they relate to Legal Aid in connection with such proceedings.

The Building Restrictions

THE MINISTER OF WORKS stated in the Commons on 18th November that no licences will be needed as from 1st January, 1953, for building work or repairs to private houses costing up to £500 and for building work and repairs to industrial and agricultural buildings costing up to £2,000. Since 1st July, 1952, the limits have been £200 and £500 respectively. The new limits are to operate for the whole of 1953. The increase is designed to give greater certainty of employment in the building trade during the winter months, to facilitate the conversion of large private houses into flats, and to effect a considerable reduction in the cost of the licensing system to local authorities and builders.

Safety Rules for Merchant Ships: 1948 Convention

THE International Convention for the Safety of Life at Sea, which was drawn up in London in 1948, came into force on 19th November, and at the same time new safety rules made by the Minister of Transport under the Merchant Shipping (Safety Convention) Act, 1949, were brought into force to give effect to the convention. The rules apply to United Kingdom ships and, in many cases, to other vessels while in United Kingdom ports. The new convention replaces that of 1929. From 19th November also the fees charged by the Ministry of Transport for marine surveys and for other shipping services have been increased. The fees charged by classification societies for load line surveys are also increased.

The Solicitors' Benevolent Association

THE report of the directors of the Solicitors' Benevolent Association, presented to the Association's ninety-fifth annual general meeting held on 5th November, announces that HER MAJESTY THE QUEEN has graciously consented to continue the patronage which her father, the late George VI, gave to the Association from 1937 until his death. The relief granted during the year from the general and special trust funds to 316 beneficiaries amounted to £32,771 1s. 4d. This total is made up of £29,529 18s. for maintenance, £1,159 18s. 8d. for education and training, and £2,081 4s. 8d. in special grants for holidays, clothing, convalescence, etc. The comparative figure for last year was £34,834 14s. 2d. Twenty-six new applications for relief were received during the year, compared with 38 last year. Of the total of 316 beneficiaries who received relief 22 were solicitors, 108 dependants of solicitors practising in London, of whom 34 also receive grants from the Law Association, and 186 dependants of solicitors practising in the provinces. During the year 293 solicitors were admitted to membership of the Association. The deaths of 155 members were notified and 44 ceased their membership. The total membership at 30th June, 1952, was 7,650. This is less than one-half of the number of practising solicitors, and the directors earnestly ask all members to make every effort to increase this figure by enlisting the support of those solicitors who do not yet subscribe to the benevolent association of their profession—the minimum annual subscription is £1 1s., which is almost doubled in value to the Association if paid under a seven-year deed of covenant; a life-membership subscription is £10 10s. The directors wish to express their gratitude to The Law Society and to local law societies throughout the country for their donations which, this year, totalled £485 2s., as well as to other donors, whose gifts totalled £604 5s. 7d. Legacies totalling over £8,000 are acknowledged with appreciation.

Christ Church Law Club

IN October, 1927, Mr. S. N. GRANT-BAILEY formed the Christ Church Law Club, which now numbers 400 members, and has fifty eminent lawyers among its vice-presidents. Now, in its silver jubilee year, it is possible to appraise its success by its results, among which the most obvious is that so large a number of its members have distinguished themselves in the past twenty-five years in their careers as solicitors and barristers. One of the important activities of the club is the holding of moots. Mr Grant-Bailey knew from first-hand experience the part played by the law clubs in the great law schools of Canada and the United States, in many of which it is a condition of eligibility for a degree in law that an undergraduate shall have taken part in a moot at least once a year during his three-year course. The moots, according to Mr. Grant-Bailey, give the student an opportunity to apply theories to fact, accustom him to think on his feet, to deal with interruptions and answer questions. Moots are held on an average of once a week during term. The success of this club provides an object lesson for all law schools.

The Annual Conference: Committee Reports

THIS year, as in 1951, we are able to complete our report of The Law Society's Annual Conference by reprinting at p. 780, *infra*, by permission of The Law Society, the reports of Chairmen of Committees of the Conference which were presented to the Final Session, and which appear in the November issue of the *Law Society's Gazette*. The reports were not available for earlier publication, as the Final Session was not open to the Press.

TOWN AND COUNTRY PLANNING: FINANCIAL PROVISIONS—I

THE long awaited details of the Government's proposals for amending the financial provisions of the Town and Country Planning Act, 1947, have now come to light in the shape of a four-clause Bill and a White Paper.

Though the Bill is short it is by no means simple. The first clause is devoted to abolishing development charge. The second clause (1) removes the obligation to distribute the well-known £300m. fund, (2) retains the machinery set up for the establishment and determination of claims on the fund, (3) provides that such claims shall be satisfied " in such manner, in such cases, to such extent, at such times and with such interest as may hereafter be determined by an Act of Parliament passed for that purpose," and (4) requires the approval of the Central Land Board for any assignment of a claim which would divorce it from the land to which it relates. The third clause contains savings and special provisions, of which the one of most general interest is, perhaps, the removal of the Central Land Board's power to acquire land, whether by agreement or compulsorily. The fourth clause gives the short title as the Town and Country Planning Act, 1952.

The principles of the amendments are simple; the difficulties lie in defining the manner, cases and extent in and to which claims originally made on the £300m. fund are to be satisfied. For this definition the Government require another year's thought, having in the meantime indicated in the White Paper their general intentions and the difficulties involved. The general intentions of the Government in this connection may be expressed in the following words taken from the White Paper: " . . . to pay compensation for planning restrictions (subject to certain exceptions) as and when development of land is prevented or severely restricted." Apart from the important words in parentheses, of which more will be said later, it is a condition precedent, as is evident from the provisions of cl. 2 of the Bill referred to above, to the receipt of any compensation that the person concerned should be the holder of an admitted claim on the old £300m. fund. No claim, no compensation, is to be the rule. This is bound to produce serious anomalies, and readers acting for prospective purchasers or mortgagees of undeveloped land cannot be too careful to verify the existence and admitted amount of a claim, otherwise their clients may suffer a severe financial loss.

To take a simple example. *A* and *B* are builders; they each buy a 10-acre field on the outskirts of a town for development, at a price of £800 per acre. After buying the land they are refused planning permission to develop it, because it is part of a green belt round the town. The former owner of *A's* field has a claim on the £300m. fund, and the development value has been agreed at £700 per acre; the former owner of *B's* field made no claim. *A*, assuming that the claim has been assigned to him, may expect to receive compensation of up to £7,000; *B* will receive nothing and so lose the £8,000 he has paid for the building value of the field.

Of course, if they had been prudent, *A* and *B* would have obtained an outline planning permission before buying, but, in practice, especially where land is sold by auction, it is not always practicable to do this.

Furthermore, even if *B* had obtained planning permission he might still be running a serious risk, because it is the Government's intention (White Paper, para. 30) that compensation for compulsory acquisition should be based on current existing use value, plus the 1947 development value. In other words, if *B's* land were acquired compulsorily before he could develop, all he would get would be the agricultural value, say, £1,000.

It is, therefore, more important than ever that, wherever possible, planning permission should be obtained before purchase, and it is also most important to make full inquiries about any claim on the £300m. fund, and to secure the assignment to the purchaser of the right to receive the payment in respect of it.

There are other obstacles to the receipt of compensation, but these can only be deduced from the White Paper and not from the Bill. Land owners and their advisers have grown used to legislation by order and regulation, and even by Bill, for the Bill that was to become the Act of 1947 cast its shadow long before it received the Royal Assent, but legislation by White Paper is something new and presents readers with difficult problems. How can they be expected to advise their clients when the Government themselves do not know fully what they intend? The White Paper is, in effect, legislation, because dealings in land in the interim period before the further Act referred to in cl. 2 of the Bill is passed are bound to be affected by the compensation principles laid down in it. For all the uncertainty, however, the changes will no doubt be generally welcomed by owners.

The cardinal rule—no claim, no compensation—has been dealt with, a little out of place perhaps, but this is because it is so important and is in many ways the most striking example that there is no return to the pre-1947, carefree days.

To return, however, to the order in which matters are dealt with by the Bill, the abolition of development charge is the subject of cl. 1 of the Bill. The critical date is the 18th November, 1952, the date of introduction of the Bill. No charge is payable for any development *commenced* on or after this date. Normally development charge has to be paid before development is commenced, and, no doubt, there are many cases where the charge was paid before the date and the development is not commenced until after it. In such cases the Bill (cl. 1 (5)) provides for repayment of the charge. This, however, is the only case where a charge will be repaid.

There may be cases where a single application for determination of a charge has been made in respect of several distinct operations (e.g., the erection of two or three buildings on one piece of land) or uses, but only one of these operations or uses was commenced before the 18th November. Nevertheless, if the application was made before the 18th November, whether or not the charge was determined before that date, the whole charge has to be paid; if it has been paid no part can be reclaimed; if it has not been paid, it remains payable in full (cl. 1 (2)). *A fortiori* there will be no part repayment where a single building is commenced but not completed before this date.

There has been no retrospective abolition of the charge. It therefore remains as important as ever to verify, when investigating the planning history of a property, that any necessary charge has been paid for development commenced between the 1st July, 1948, and 18th November, 1952. The powers of the Central Land Board under s. 74 of the 1947 Act to charge a property with up to treble the charge payable for such development are unimpaired.

Difficult questions may sometimes arise as to whether particular development was commenced after the 18th November. Where possible it will be desirable to preserve some evidence of commencement after this date.

Strictly speaking, of course, until the new Bill receives the Royal Assent, it remains a contravention of Pt. VII of the 1947 Act to commence development without paying a charge or obtaining a consent to proceed from the Central Land Board. As, however, the new Bill provides not only that Pt. VII shall not apply to development commenced after 18th November, but " shall be deemed never to have applied " thereto, it seems quite unnecessary to go through the motion of applying for determination of a charge, though, no doubt, the Board would, in the circumstances, issue a consent to proceed.

Before leaving the subject of development charge, there is one question to be answered, namely, will persons who have paid development charge, and are not entitled to repayment, receive any compensation? These persons may fall into three groups :—

(1) persons who bought their land before 1st July, 1948, and developed afterwards ;

(2) persons who were fortunate enough to buy their land after 1st July, 1948, at existing use value ;

(3) persons who bought their land after 1st July, 1948, but who had to pay more than existing use value.

Persons in the first group should have a claim on the £300m. fund. If they have, the Government intend that they should be paid compensation up to the amount of the charge, with interest (White Paper, para. 50). If they have no claim, they will have no compensation.

Persons in the second group will, in fact, have paid no more than they would have had to pay in a free market. They will not receive any compensation and it would not be equitable that they should.

Persons in the third group may be sub-divided into three sub-groups—

(1) those in respect of whose land no claim was made on the £300m. fund ;

(2) those in respect of whose land a claim was made and was assigned to them on purchase of the land ;

(3) those in respect of whose land a claim was made, but the claim was retained by the vendor when he sold.

Those in sub-group (1) will receive nothing. It is not clear from the White Paper what is intended for those in sub-group (2), but probably they will receive as compensation the amount of the charge with interest. As to sub-group (3), it is intended that the vendor should receive so much of his admitted claim as is needed to make up the price he received to the amount of the 1947 unrestricted value of the land (White Paper, para. 49), and the White Paper (para. 50) states that it is right that the balance should be paid to the developer who paid the charge. On this basis, if *A* sold to *B* a building plot, existing use value £10, development value £180, admitted claim on the £300m. fund £180, for the sum of £150 and *B* had to pay a charge of £180, *A* would get £40 and *B* £140, in each case plus interest. This may seem an apparent exception to the rule that a person who does not hold a claim should not receive any compensation. The payment to *B* is justified because it is his excess payment to *A* that has reduced the Government's liability to pay compensation to *A* from £180 to £40.

Clause 2 of the Bill initiates the change in the compensation arrangements.

One of the objects of the Act of 1947 included in the preamble to that Act was " to provide for payment out of central funds in respect of depreciation occasioned by planning restrictions." What the Act provided was really quite different ; it provided payments for depreciation occasioned, not by planning restrictions in the sense of refusals by the planning authority to give permission for development, but by the wholesale removal of development value from all land, whether or not planning permission was granted for its development, effected by requiring a development charge to be paid to the Central Land Board before development could be carried out. Under that Act payments were to be made to everyone who could prove a depreciation in development value, whether or not they were prevented from developing their land, and whether or not they intended to develop.

Development charge has now been abolished. Consequently, it is now only necessary to provide for payments for depreciation occasioned by planning retrictions properly so called, i.e., where planning permission is refused or made subject to conditions.

The payments under the 1947 Act were to be made not later than 1st July, 1953. This obligation is removed by sub-cl. (1) of cl. 2 of the new Bill, but, as pointed out above, no specific obligation is substituted by the Bill. and one can only look to the good intentions expressed in the White Paper for the future.

The general intention is to provide that any person whose land is depreciated by refusal of planning permission, or the grant of permission subject to conditions, should be compensated for that loss. Compensation is the word used by the White Paper. It imports the idea of the full making up of loss and was carefully avoided by the Government which introduced the 1947 Act ; they preferred to refer to the payments provided for by that Act as payments in respect of hardship. The use of the word in the White Paper should not be allowed to delude the reader into thinking that any loss his client may suffer as a result of planning restrictions will be made up and that, therefore, he need have no worries in advising him as to buying property or lending money on its security.

The cardinal rule—no claim, no compensation—has already been referred to. The Government also intend that the admitted amount of the claim, which is based on values current immediately before 7th January, 1947, should set the upper limit of any compensation (White Paper, para. 28).

The proviso to sub-cl. (1) of cl. 2 of the new Bill keeps alive the machinery of the 1947 Act for the establishment and determination of claims. It in no way alters the basis on which such claims are to be made and determined. It follows, therefore, that there is no fresh opportunity for making claims where none have already been made, that there is no question of reopening claims already settled, and that any claims not yet settled should be vigorously pursued. A possible exception to this is where planning permission has been received for the development, the development value of which is the subject-matter of the claim and the development has been commenced after the 18th November, 1952.

In theory, the setting of the admitted amount of a claim on the £300m. fund as the upper limit of compensation should stabilise the development value of undeveloped or under-developed land at 1947 values. Doubtless, in practice, it will not do so. The reader has already been advised that, when acting for a purchaser of undeveloped land, he should make full inquiries about the claim on the £300m. fund. He should warn his client that, if he pays more than the existing use value of the land plus the admitted amount of the claim, he will not be repaid the excess by way of compensation if planning permission is refused or the land is compulsorily acquired.

Many exceptions are envisaged in the White Paper to the payment of compensation and these, together with a number of miscellaneous details, will be examined in the next part of this article.

R. N. D. H.

NEW INTESTACY RULES—IV

AMENDMENTS TO THE INHERITANCE (FAMILY PROVISION) ACT, 1938

THE Intestates' Estates Act, 1952, makes various amendments to the Inheritance (Family Provision) Act, 1938, as respects a person dying on or after 1st January, 1953. Some of these amendments are for the purpose of extending the 1938 Act to cases where persons die intestate, but there are other important amendments which will apply even though the deceased leaves a will disposing of the whole of his estate, and these will be considered first. The Act of 1938, as amended (and therefore as it will apply on deaths on or after 1st January, 1953), is printed in Sched. IV to the Intestates' Estates Act, 1952.

In order that there may be no doubt about the effect of the various changes it is necessary to bear in mind the circumstances in which an application may be made to the court under the 1938 Act. Section 1 (1) provides that the court may order reasonable provision, within certain limits, for the maintenance of dependants if that has not been made by will (or as a result of the 1952 Act, on death after 1952, if that is not made by the intestacy rules). "Dependants" are closely defined as being (*a*) a wife or husband, (*b*) a daughter who has not married, or who is, by reason of some mental or physical disability, incapable of maintaining herself, (*c*) an infant son, or (*d*) a son who is, by reason of some mental or physical disability, incapable of maintaining himself. It is important to remember that the persons who may have claims under the 1938 Act are limited in this way.

Under s. 1 (3) of the 1938 Act the income which might be made applicable for maintenance of such dependants might not be such as to render them entitled under the will as varied by an order to more than, (*a*) if the testator left both a wife or husband and one or more other dependants, two-thirds of the income of the estate, or, (*b*) if the testator did not leave a wife or husband or left a wife or husband and no other dependant, half of the income of the estate. As regards deaths after the end of 1952 this provision has been repealed and s. 1 (3), as re-enacted, now provides that periodical payments to be made by an order "shall not be at an annual rate which exceeds the annual income of the net estate."

This means that the court will have a discretion to grant the whole of the income to dependants and so there is a material extension of the benefits which may result. Nevertheless, it is important to remember that the restriction in s. 1 (1) proviso is maintained, that is, that no application may be made to the court where the disposition of the deceased's estate is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and the only other dependant or dependants, if any, is or are a child or children of the surviving spouse. As the whole of the income may now pass under an order of the court for maintenance it appears anomalous that an application should not be possible where two-thirds of the income passes to the surviving spouse. For instance, if only half of the income has been given to the surviving spouse it would seem quite possible that the court might make an order such that more than two-thirds would pass to the surviving spouse and dependent children, and so they would together be in a much better position than if the testator had left a will limiting the benefit to the surviving spouse to two-thirds of the income of the net estate.

The second major change in the Act relates to the circumstance in which a payment of capital may be ordered instead of a payment of income. The general rule under the 1938 Act is that provision for maintenance to be made by an order shall be by way of periodical payments limited to the amount of the annual income. Under s. 1 (4) of the 1938 Act, as originally enacted, where the value of the testator's net estate did not exceed £2,000 the court might provide for maintenance in whole or in part by payment of capital. As regards deaths on or after 1st January, 1953, maintenance may be provided by way of a lump-sum payment in any case in which the value of the deceased's net estate does not exceed £5,000. This change seems to accord with the principle behind many of the provisions of the 1952 Act that life interests in relatively small sums shall be avoided wherever possible. There is no limit on the manner in which the court may exercise its discretion in fixing the amount of this lump sum, and so a dependant may well take the whole, or substantially the whole, of the capital of the estate if the court considers this to be reasonable provision for the dependant's maintenance.

A further amendment affects procedure, but is nevertheless an important one. In the 1938 Act the general rule was that an application for maintenance had to be made within six months from the date on which representation to the estate was first taken out. In practice this rule has been found to be unduly restrictive. Consequently a new subsection (1A) to s. 2 of the 1938 Act is introduced in respect of deaths on or after 1st January, 1953. The court may extend the period within which application may be made if it is shown to the satisfaction of the court that the limitation to the period of six months would operate unfairly (*a*) in consequence of the discovery of a will or codicil involving a substantial change in the disposition of the estate, or (*b*) in consequence of a question whether a person had an interest, or as to the nature of an interest, not having been determined when representation was first taken out, or (*c*) in consequence of some other circumstances affecting the administration or distribution of the estate. The contrast between the precise wording of (*a*) and (*b*) on the one hand, and the wide provision as to "other circumstances affecting the administration or distribution" in (*c*) on the other hand, is rather striking, and may make difficult the determination of what "other circumstances" may be taken into account by virtue of (*c*). As the personal representatives might be in some difficulty in deciding whether to distribute the estate after the expiration of six months from the date on which representation was first taken out, it is provided by s. 2 (1B) that the personal representatives may distribute the estate even though there is a possibility that the court might extend the period in which an application could be made. Nevertheless, if an order for maintenance is made after the court has extended the period for application, any part of the estate may be followed and recovered.

FAMILY PROVISION ON INTESTACY

The Inheritance (Family Provision) Act, 1938, as originally enacted, did not apply to cases of total intestacy, and there was a doubt whether it applied to cases of partial intestacy. The amendments made by the Intestates' Estates Act, 1952, as regards deaths on or after 1st January, 1953, make application for maintenance possible in cases of both total and partial intestacy. For instance, s. 1 (8) provides that the court is not bound to assume that the law relating to intestacy makes reasonable provision for maintenance of dependants in all cases. The court is given power to order maintenance for a dependant if the court is of opinion "that

the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance." There will not be many applications for maintenance in cases of total intestacy, but a few may be made in order to avoid hardship to children resulting from the increase in the statutory legacy to the surviving spouse to £5,000.

In considering cases in which applications may be made, it is important to remember that, apart from a surviving husband or wife, the only dependants who can apply are daughters who have not been married, or who are, by reason of some mental or physical disability, incapable of maintaining themselves, and sons who are infants or are, by reason of some mental or physical disability, incapable of maintaining themselves. Further, where maintenance is made by way of periodical payments they must terminate, in the case of a daughter, on her marriage or the cesser of her disability, whichever is the later, and in the case of a son, on his attaining twenty-one or the cesser of his disability as the case may be. A few examples may help to illustrate how these rules will work in practice.

Let us assume that an intestate's estate is of value £4,000. The whole of this sum will pass to the surviving spouse. If, for instance, there is an unmarried daughter or a son incapable of maintaining himself, even though such children are dependants for the purposes of the Act, provided they are children of the surviving spouse (i.e., are not children of the intestate by an earlier marriage) no application can be made on their behalf. The reason is that they are barred by the rule (s. 1 (1) proviso) that no application can be made where the disposition of the deceased's estate (in this case under the intestacy rules) is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate. In fact the surviving spouse is entitled to the whole capital and, therefore, to the whole income of the net estate. If the children had been of a former marriage the position would have been different, and because the net estate did not exceed £5,000 the court could have made an order for maintenance by way of a lump-sum payment (1952 Act, s. 1 (4)).

Another example might be taken of a case in which an intestate's estate had a net value of £10,000, and he left a widow and an infant son or daughter. In addition to personal chattels the widow would take the statutory legacy of £5,000 and a life interest in half the balance. Once again she is entitled to more than two-thirds of the income of the net estate and so, provided she is the mother of the infant child of the intestate, no application can be made on behalf of that child.

Now let us take an example of a larger estate, say of net value of £45,000. Leaving out of account personal chattels, if the intestate left issue, the widow will take the statutory legacy of £5,000 and a life interest in half of the remainder, namely £20,000. In this case the statutory legacy is regarded only as a source of income, and so the widow is entitled to less than two-thirds of the income of the net estate. Consequently, if the intestate left another dependant (i.e., a son or daughter incapable of maintaining himself or herself by reason of mental or physical disability, an unmarried daughter or an infant son), an application can be made to the court. This does not mean that an application should be made in every such case, however, and one envisages considerable difficulty in deciding what action to take. If, for instance, there was one child only who was under a disability, in the example given that child would be entitled to the capital sum of £20,000, together with a further capital sum of £20,000 on the death of the widow. As the widow is entitled to £5,000 capital and interest on £20,000 only, it is most unlikely that the court would make any order in favour of the disabled child. On the other hand, if the disabled child was one of, say, five children, an application might be successful. In this case he would be entitled immediately to £4,000 capital, and to £4,000 on the death of the widow. The court might well make an order in favour of the disabled child giving him further periodical payments during his disability at the expense of the widow or other children, particularly if they had substantial means from other sources.

By way of contrast, it is interesting to consider whether a widow might have reason to apply for an order under the 1938 Act where her husband died intestate. Clearly, she will have reason to do so only if the estate is a very large one. Let us assume that the net estate is £300,000. If there is no issue, but brothers of the intestate survive him, the widow will take personal chattels, £20,000 and half the residue absolutely. As she can dispose of over half the capital the court is most unlikely to make an order in her favour. On the other hand, if issue survive she will take personal chattels, £5,000 only and a life interest in half the residue. It is possible to argue that in such a case an order might be made in favour of the widow on the ground that her life interest is not reasonable provision for maintenance, particularly if the children have other large capital sums. Nevertheless, it seems most unlikely that such an argument would succeed. In *Re Inns* [1947] Ch. 576 Wynn Parry, J., refused to make an order in favour of a widow whose husband left a net estate of £600,000, but left her only the income on £85,000 for life and the right to occupy a house. The learned judge held that he could not consider such provision to be unreasonable. Therefore, it does not seem likely that the widow of a person dying wholly intestate will ever be able to make a successful application.

It is quite clear that some difficult decisions will be involved, both for the courts in determining the orders to be made, and for those advising whether applications should be made. In many cases the cost of an application will be a relevant consideration, particularly if amicable arrangements can be made between members of a family. Perhaps one should point out that the only dependants who can claim under the 1938 Act, other than the surviving husband or wife, are certain sons and daughters. Consequently, the increase of the statutory legacy to a surviving husband or wife to £20,000, where there is no issue, will not give rise to any applications under the 1938 Act.

J. G. S.

MR. E. P. BOWLES

Mr. Eustace Parker Bowles, solicitor, of Newcastle-under-Lyme, died on 15th November, aged 68. Admitted in 1910, he was for over thirty-five years Clerk to Newcastle County Magistrates, Deputy Chairman of Shropshire Quarter Sessions since 1947, and for fifteen years a member and past Chairman of Market Drayton Urban District Council.

MR. P. H. T. GODSON

Mr. Phillip Herbert Tankerville Godson, solicitor, of Bristol, has died at the age of 79. He was admitted in 1894.

MR. E. L. GREAVES

Mr. Edwin Lunnor Greaves, retired solicitor, formerly of Serjeant's Inn, E.C.4, and Hampstead, died at Tunbridge Wells on 16th November. He was admitted in 1896.

A Conveyancer's Diary

REPUDIATION OR RESCISSION ?

THE rights accruing to a vendor on the failure of a purchaser to complete a contract for the sale of land at common law and in equity respectively overlap in a most untidy and confusing way, and so far as I know there is no clear statement contrasting the rules of law and equity in this respect either in the text-books or in any of the many authorities on this point. Some of the confusion surrounding this subject arises from what appears to be the indifferent use of the expressions "repudiation" and "rescission"—expressions which, in the senses in which they ought to be used, indicate two completely different concepts; but for the most part the difficulty lies much deeper, in the fact that the fusion of the rules of law and equity, however perfect in the contemplation of the Legislature, is still far from complete in the minds of fallible men.

Contracts for the sale of land commonly provide for what the vendor may do in the event of his purchaser's failure to complete in accordance with the contract, but conditions of this kind, at any rate those in common use, add little (if anything) to the vendor's rights apart from express condition. These rights, broadly speaking, are two: he may rescind the contract and forfeit the deposit, or he may bring an action for damages against the purchaser for breach of contract. In the former case the vendor is not entitled, in addition to forfeiture of the deposit, to damages for breach of contract, even if the injury he has suffered is not fully compensated by the amount of the deposit (*Henty* v. *Schröder* (1879), 12 Ch. D. 666). In the latter case, in computing the amount of the damages, the deposit must be brought into account (*Ockenden* v. *Henly* (1858), E.B. & E. 485). In addition there is the vendor's right to resell, but this is not quite *in pari materia* with the two rights I have just discussed. These latter are, strictly speaking, remedial rights, coming into existence upon, and indeed entirely owing their existence to, the default of another, whereas the right to resell is a proprietary right, arising out of the ownership of the property in question by the vendor. It is, perhaps, convenient to describe this right as a right to resell, but that is really something of a misnomer, implying that there has been a previous sale, whereas the essence of this right is the continued dominion of the vendor over the property and such dominion could not continue to exist if the previous sale had not proved wholly abortive. This conception of the so-called right to resell is well recognised where the original contract is rescinded, whether under a special condition or otherwise—see, for example, a recent statement of the law in this respect in Mr. W. J. Williams' "Law relating to the Title to Land," pp. 557–58, but the position is precisely the same where there has been no formal rescission, but the purchaser has repudiated the contract, whether by words or conduct, thus entitling the vendor, at his option, to rescind or bring an action for damages and the vendor pursues the latter remedy. This must be so if (as I hope to show) the vendor's right to rescind and his right to bring an action for damages, although in origin the one is an equitable right and the other a legal right, have been so far assimilated that they arise at one and the same time.

For this I refer to *Howe* v. *Smith* (1884), 27 Ch. D. 89. In this case a purchaser was held to have disentitled himself to specific performance because he had delayed to complete for an excessive time, and for the same reason the vendor was held to be entitled to retain the deposit. There was no formal rescission of the contract by the vendor, in the sense of any notice of rescission sent to the purchaser, but between writ and defence the vendor sold (or, in the common phrase, resold) the property to another, so that the original contract was in fact rescinded. *Prima facie*, therefore, the questions before the court were both questions of equity: had the purchaser by delay lost his right to obtain the equitable remedy of specific performance, and had the vendor, by the same token, acquired a right to the equitable remedy of rescission of the contract, to which the forfeiture of the deposit was a pendant ? In fact, however, in considering the latter question the court would appear to have taken into account the legal position between the parties. Thus Cotton, L.J., is reported as having said (at p. 95) that "in order to enable the vendor [to retain the deposit] there must be acts on the part of the purchaser which not only amount to delay sufficient to deprive him of the equitable remedy of specific performance, but which would make his conduct amount to a repudiation on his part of the contract." To the same effect is the observation of Bowen, L.J., at p. 99, that "it does not follow as a matter of law or principle that because specific performance is refused therefore the whole contract is at an end at law." And finally, Fry, L.J., at p. 103, after reviewing the nature and effect of a deposit in a passage which has become the *locus classicus* on the subject, said that "such being my view of the nature of a deposit, it appears to me to be quite clear that the purchaser has lost all right to recover it if he has lost both his right to specific performance in equity and his right to sue for [non-performance of the contract] at law." The learned lord justice then went on to say that it had already been decided that the purchaser, by his delay, had lost all right to specific performance, but that it remained to inquire whether he had also lost all right to sue for damages for non-performance of the contract. As already indicated, the view of the court on this question was that the purchaser had lost such last-mentioned right, as well as his rights to specific performance, and that the vendor was consequently entitled to retain the deposit.

Now I am not going to be so foolhardy as to suggest that in insisting on this double condition, as it were, the Court of Appeal (and particularly a court composed as this one was) was anything but right. Quite clearly circumstances may arise where a purchaser is unable to obtain specific performance of a contract for the sale of land against his vendor, but yet the contract is still on foot and can be enforced at law. For example, want of mutuality may disentitle the purchaser to specific performance, but this would not otherwise affect the efficacy of the contract. But where the cause of the purchaser's loss of his right to specific performance is delay, then it appears that such loss occurs simultaneously with the loss of his right to enforce his contract at common law, or, what is the same thing, simultaneously with the accrual of a right in the vendor to bring an action against him for damages for breach of the contract. No authority for this view can be derived from the decision in *Howe* v. *Smith* itself, but that is, as I see it, no fatal objection, for two reasons: first, that, on the facts in that particular case, the delay having been gross enough to deprive the purchaser of his rights at common law, *a fortiori* it was enough to deprive him of his equity to the discretionary remedy of specific performance; and, second, that the case was decided only a few years after the Judicature Act,

1873, of which s. 25 bore on this matter, but which had not then been exhaustively considered in the courts.

Section 25 provided that stipulations in contracts as to time which would not before the passing of the Act have been deemed to be or to have become of the essence of such contracts in a court of equity should receive in all courts the same construction and effect as they would theretofore have received in equity. The effect of this section was described by Lord Parker in *Stickney* v. *Keeble* [1915] A.C. 386, at p. 417, in the following passage: "The section cannot . . . mean that the rules as to time laid down by courts of equity in certain cases, for certain purposes, and under certain circumstances only, shall be applied generally and without inquiry whether the particular case, purpose, or circumstances are such that equity would have applied the rules. If since the Judicature Acts the court is asked to disregard a stipulation as to time in an action for common law relief, and it be established that equity would not under the then existing circumstances have prior to the Act granted specific performance . . . the section can . . . have no application, otherwise the stipulation in question would not, as provided in the section, receive the same effect as it would prior to the Act have received in equity."

Apply this statement to the facts of the particular case that we are considering, and we have this position: a purchaser delays to complete his contract, but time is not of the essence (s. 25), so that the vendor cannot immediately bring an action for damages for breach of contract at common law. But if the delay is so gross as to deprive the purchaser of the right he would otherwise possess to specific performance against his vendor, then, in Lord Parker's words, s. 25 has no application, i.e., time becomes, and is presumably deemed to have always been, of the essence for the purposes of supporting the vendor's rights at common law, and the common law action for damages can be brought against the purchaser. The vendor's common law right accrues simultaneously with the purchaser's loss of his equitable right to specific performance. But the converse of the purchaser's loss of his equitable right to specific performance, in equity, is the accrual of a right in the vendor to rescind the contract in equity, and it therefore appears that the vendor's rights to damages at common law and to rescind in equity in the case of delay by the purchaser arise simultaneously, and are available as genuine alternatives.

This may seem a very long way round to a conclusion which, however confusing the authorities may be, most people will instinctively feel to be the only possible conclusion, but it is still, I think, worth making the point if only to drive home one very practical lesson. Printed conditions of sale often refer to the vendor's right to rescind the contract in certain circumstances. But what is the point of a formal rescission? To forfeit the deposit? But the deposit, in its quality as a pledge of performance, is equally forfeited by the purchaser's repudiation of the contract, leading, as we have seen, at the vendor's option, to an action for damages for breach of contract. On the other hand, a formal rescission disentitles the vendor to damages in addition to the deposit (*Henty* v. *Schröder*, *supra*), and until the quantum of the injury has been ascertained (usually by a sale to a third person) it is highly desirable to preserve the vendor's right to damages intact. The proper course, in my view, is for the vendor not to rescind, but to inform the purchaser that the latter's delay has been such as to amount to a repudiation of the contract. Of course, the question when a purchaser's delay can be so regarded has then to be considered—a question which is often affected by the terms of the contract as well as its subject-matter—but that is another matter.

"A B C"

Landlord and Tenant Notebook

USE FOR THE PURPOSE OF "A" DWELLING-HOUSE

If a landlord who lets a house does not want his tenant to use it for non-residential purposes or to divide it into tenements, he would be well advised to introduce the phrase "in single occupation only," or something like it, into the appropriate restrictive covenant. That, I think, is the lesson of *Dobbs* v. *Linford* [1952] 2 All E.R. 827; *ante*, p. 763 (C.A.).

The plaintiff in that case had let a house to a lady (who had since died intestate), the agreement containing a tenant's covenant "not to use the premises for any purpose other than as a private dwelling-house and not to sub-let or part with the possession of the premises (except as a furnished house) without the consent in writing of the landlord, such consent not to be unreasonably withheld in the case of a respectable and responsible person," which was reinforced by the usual forfeiture clause. The tenant had let the top floor to one person and a room to another, and these were (first and second) defendants in the action which the plaintiff brought after the death of the tenant. No representation had been taken out of her estate, but presumably the proceedings, while described as an action for possession on the ground of breach of covenant by the tenant, were based on forfeiture; and it would be interesting to know what notices were issued and served. However, the report is concerned with the question whether the covenant, which, as will have been observed, says nothing about not sub-letting part of the premises, had been broken.

One might be tempted to offer a quick solution by making a purely grammatical approach to that part of the covenant which deals with user. Use as two or more dwelling-houses, it might be said, is not use as *a* dwelling-house (there are, indeed, many languages which have only one word for "a" and "one"). But the argument is, especially in view of one authority which was cited and which I will come to presently, answerable; the answer being that such a covenant is concerned with quality rather than with quantity. All the landlord wanted, it may be contended, was to ensure that the building should be used for residential and not for any other purposes.

Support for that contention can be found in *Grove* v. *Portal* [1902] 1 Ch. 727 and in *Cook* v. *Shoesmith* [1951] 1 K.B. 752; rather more is afforded by *Downie* v. *Turner* [1951] 2 K.B. 112 (C.A.).

In *Grove* v. *Portal* a "lessee" of fishing rights (exclusive) sought and obtained a declaration that, notwithstanding a covenant by him not to underlet, assign, transfer or set over or otherwise by act or deed procure the said premises to be assigned, etc., to any person or persons whomsoever without the consent, etc., he was entitled to grant a licence to fish to a third party without the "lessor's" consent. Joyce, J., assumed that the grant would be a transfer of the "premises" and, applying the *dicta* in *Church* v. *Brown* (1808), 15 Ves. 258, so often invoked in such cases, held that the covenant would not be broken, though it would be if the covenant had extended to parting with any part of the premises. And it is pertinent to the decision under discussion to observe that

the learned judge cited a passage from the judgment in *Crusoe* v. *Bugby* (1771), 3 Wils. 234 : " The lessor, if he pleased, might certainly have provided against the change of occupancy as well as against an assignment, but he has not done so by words which admit of no other meaning."

The more recent decision in *Cook* v. *Shoesmith* applied the above to a home-made agreement by which a tenant " further agreed not to sub-let " a house at Hove, held not to have been infringed by a sub-letting of two of the top rooms. *Church* v. *Brown* and *Grove* v. *Portal* were held to govern the construction of the document, though, as has been suggested in the " Notebook " (96 SOL. J. 307), what had occurred may well have been the very thing contemplated by the particular parties to that particular agreement.

The importance of *Downie* v. *Turner* lay in the fact that in that case, the decision in which actually turned on a question of waiver, the court was prepared to assume (though indeed with some doubt) that a covenant not to use a house for any other purpose than as a private dwelling-house (which went on : " or do anything thereon which may be or become a nuisance to the said landlord or adjoining tenants or neighbours ") would have been broken by a sub-letting of part. It might be, Jenkins, L.J., said—and he was content for the purposes of that case to assume—that a mere sub-letting of part of the premises *for residential purposes* would in itself constitute a breach of the covenant as to user. But in that case the tenant had also covenanted not to underlet the premises *or any part thereof* without the landlord's consent ; the landlord had accepted rent with knowledge of the sub-letting of a flat in the house ; and it was held that, whether the alleged breach of covenant as to user was continuing or not, the waiver of the breach of one disentitled the landlord to rely on breach of the other.

The last-mentioned authority was naturally cited by the first defendant (the second defendant took no part in the proceedings) in *Dobbs* v. *Linford*, but was distinguished by the court, substantially on " *noscitur a sociis* " lines. The covenants in a lease, Harman, J., opened his short judgment by saying, " must be construed by reference to the covenants which follow or precede them." Now, the covenant against alienation in *Downie* v. *Turner* was a covenant not to underlet the premises *or any part thereof* without the previous consent in writing of the landlord ; which warranted the inference that it had been contemplated the house might be divided into more than one dwelling-house and yet comply with the other covenant prohibiting its use " for any other purpose than as a private dwelling-house." (One might add that the fact that the same covenant prohibited annoyance, etc., without as much as a comma in between, suggests that the function of the word " private " was really to ensure that there should be no " business " sub-letting.) But in *Dobbs* v. *Linford* there was no express restriction on sub-letting part for the simple reason—at all events, the inference appeared irresistible to Harman, J.—that that restriction had been omitted because the other covenant, not to use otherwise than as a private dwelling-house, had already provided the desired protection. Chess-playing readers may be reminded of Lasker's principle of economy : never use more pieces to protect some other piece than is necessary.

In fact, support for the plaintiff's contentions was found in observations made by Eve, J., in *Barton* v. *Keeble* [1928] Ch. 517, others made by Atkin, L.J., in *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.), the latter concerning an unreported decision (*Berton* v. *London and Counties House Property Co.*). In all of these, referred to by Romer, L.J., in his lengthier judgment, the Estate Governors of Alleyn's College, Dulwich, sought to pursue their object of preserving the amenities of the residential estate of which they were trustees. Taking the decisions in chronological order : in the unreported case (decided in 1920) the Court of Appeal held that a covenant to use only as a private dwelling-house a house in the district in question was broken by sub-letting it in tenements—though it was also a breach of a covenant against annoyance. And Atkin, L.J., spoke of approval with this decision in the *Alliance Economic Investment Co.* case, the subject-matter being a similar house held under a similar lease. In *Barton* v. *Keeble* the instrument was slightly differently phrased, the covenant being not to use the demised house " for any purpose whatsoever other than for the purpose of a private dwelling-house wherein no business of any kind is carried on." It is rather unfortunate that while the headnote version contains a comma after the word " dwelling-house " there is none in the statement of facts, and one would have thought that the presence or absence of such punctuation would have thrown some light on the question whether the concluding words were meant to qualify, or merely to emphasise, the preceding words. The report of the argument for one of the defendants suggests that there was no comma : " the house is still a private dwelling-house wherein no business is carried on." Eve, J.'s judgment never cites the covenant *in extenso*, but the learned judge favoured the view that the concluding words emphasised or described rather than qualified or defined, and he considered in any event that " there were obvious reasons why a house occupied by two separate families could not be accurately described as a *single* private dwelling-house " ; the word in italics may be considered a judicial embellishment. But at all events, what has happened since then does, I submit, justify the suggestion made in my opening paragraph and in 1771 in *Crusoe* v. *Bugby*, *supra*.

R. B.

HERE AND THERE

NOTHING FOR WOMEN

I FORGET which elegant Frenchwoman it was who once complained : " En Angleterre rien n'est fait pour les femmes —pas même les hommes." This profound truth is as manifest in the realm of the law as in other connections and relationships, and whether at the Bar or in the dock woman, as such, enjoys none of those special advantages which would be hers over the water. Thus, while French forensic robes lend themselves readily to Dior-like effects of cut and finish, not all the *couturiers* in the Rue de la Paix could do anything in particular about the masculine bunchiness of English barristers' gowns nor all the milliners in the Rue St. Honoré achieve more than a modification of the handicap of making a woman ram her head incongruously into the wig of a late-eighteenth-century gentleman. If it had been a harmonious and attractive period effect that was wanted, there were plenty of perfectly good designs in feminine wig-craft to evoke the past, and the particular relevant moment of the past was especially indulgent to feminine fantasy, crowning its artificial hair styles with devices of decoration such as we now rather associate with birthday confectionery—seascapes and landscapes and ornamental gardens. Presumably the most benevolent Bar Council would have drawn the line at a certain pitch of elaboration but they might have allowed a little ship, probably on the rocks, to go with an Admiralty practice, a severed love-knot twined in a broken

heart for the divorce specialist, a dainty design of coshes and cats for a member of the Old Bailey Bar Mess or a couple of smashed up motor-cars for the habituée of "running-down" cases. But in England I suppose even the feminists (indeed, especially the feminists) could get no further than the notion of a near-male impersonation. In the dock at least a woman is allowed to be and look herself even though the English law, with its rather blinkered insistence (or so the Continental sees it) of trying facts and not persons, thereby shifts the centre of gravity to her disadvantage. Let her enter the witness-box as a litigant and the rules of evidence are particularly repressive of the feminine exercise of the art of narrative. The contrast between that sort of thing and the French point of view was illuminatingly illustrated recently. A lady was sued in the Canterbury County Court over a £7 10s. dress bill. The hearing was adjourned for an inquiry into her means, since she had arrived in a friend's Rolls-Royce and the court, instead of treating this as an inevitable setting for her blonde good looks, tended to regard it suspiciously as a *marque extérieure de la richesse*. The case was reported in the Press, complete with photograph, and before the next hearing an anonymous Frenchman had paid the sum into court. "Women of such beauty in my country," he wrote, "are never guilty. I am sending the money but if it has been paid, please get her some perfume." It had not been paid and so His Honour Judge Neal was spared an interesting shopping expedition. Unsentimentally he made an order for the payment of two guineas costs within a month.

WHY DISCOURAGE MATRIMONY?

COMPARISON of the respective outlooks current in England and in France seem to indicate that the less heavily the women stand on their impersonal rights the more likely they are to be taken on their personal merits, and this, of course, only bears hardly on those who happen to be deficient in personal merits. For that reason they will be unwise if they try to take too obvious and extreme an advantage of the recent well-intentioned decision of the Court of Appeal designed apparently to relieve them of the natural and probable, and therefore, in legal presumption, intended, consequences of letting housewifery rip into tatters. Should their husbands be so pernickety as to complain of "filth, squalor and stench," a good answer in law has, it would seem, been put into their mouths by a progressive lord justice—the men should "buckle to" and see that house and children are kept in proper condition. Now, to the slut and the slattern this will be very good news indeed and, from the particular sort of feminist who is eager to win every tactical position from the masculine enemy, regardless of the larger strategic consequences, it will likewise inspire a happy, victorious cheer. But the ground gained pushes the women into an exposed, dangerous and, in the long run, untenable position, with no accretion of strength but nuisance value. In another connection one is hearing a great deal at present about the deterrent effect in human behaviour of this or that unpleasant consequence of one's actions. Well, the accumulating legal disadvantages of matrimony for the male are bound to act as a powerful deterrent to a creature never very willing to surrender his liberty save to enchantment. If (as is the case) the wife who neglects household matters to take a job is in no wise obliged to bring her earnings into the domestic hotchpot along with his and (as now appears) the wife who just plainly and simply neglects household matters is encouraged not to worry about the consequences, the terms of the marriage contract, if reduced specifically to writing, would appear all too obviously more lop-sided than ordinary human self-interest could swallow. As I said, the women would be wiser if they put their legal rights into eclipse for a while. They will stay satisfactorily married by precisely the same means that hitherto they have got married, not as irresistible little bundles of legal rights but on their personal qualities intelligently exploited. Anyway, that's what the Frenchwomen know.

RICHARD ROE.

BOOKS RECEIVED

"Current Law" Income Tax Acts Service. [CLITAS.] Volume Two. Profits Tax and Excess Profits Levy. Editors: DESMOND MILLER, Barrister-at-Law, and H. MAJOR ALLEN, Barrister-at-Law. 1952. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Edinburgh: W. Green & Son, Ltd. Available to CLITAS subscribers at £2 12s. 6d. (not sold separately).

Ways and Means. By HENRY CECIL. 1952. pp. 272. London: Chapman and Hall, Ltd. 12s. 6d. net.

Handbook on the Formation, Management and Winding Up of Joint Stock Companies. By Sir FRANCIS GORE-BROWNE, M.A., K.C. Forty-first Edition by PHILIP JAMES SYKES, M.A., Barrister-at-Law, a Bencher of Lincoln's Inn, L. J. MORRIS SMITH, of Gray's Inn, Barrister-at-Law, OLIVER SMITH, of Lincoln's Inn, Barrister-at-Law and STANLEY BORRIE, Solicitor. 1952. pp. cviii and (with Index) 996. London: Jordan & Sons, Ltd. £3 3s. net.

In the Tracks of Crime. Edited by HENRY T. F. RHODES. 1952. pp. xii and 337. London: Turnstile Press, Ltd. 12s. 6d. net.

Chitty's Treatise on the Law of Contracts. Twentieth Edition. Fifth Cumulative Supplement (to 31st August, 1952). By BARRY CHEDLOW, of the Middle Temple and Midland Circuit, Barrister-at-Law. 1952. London: Sweet & Maxwell, Ltd. 6s. net.

Clerk and Lindsell on the Law of Torts. Tenth Edition. Fifth Cumulative Supplement (to 31st August, 1952). By B. COWDEROY, of Gray's Inn, Barrister-at-Law. 1952. London: Sweet and Maxwell, Ltd. 6s. net.

Hanson's Death Duties. Ninth Edition. Fifth Cumulative Supplement (to 13th September, 1952). By JACKSON WOLFE, LL.D., of Lincoln's Inn, Barrister-at-Law, and HENRY E. SMITH, LL.B., of the Estate Duty Office. 1952. pp. xvi and (with Index) 175. London: Sweet & Maxwell, Ltd. 20s. net.

Hill & Redman's Law of Landlord and Tenant. Supplement to the Eleventh Edition (to 1st August, 1952). By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law, and Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. 1952. pp. xv and 64. London: Butterworth & Co. (Publishers), Ltd. 9s. 6d. net.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

"Goods Vehicles" and the Use of Trailers

Sir,—I would like to express my view on the question under the above heading raised by Messrs. W. A. G. Davidson & Co. in your journal of the 22nd instant.

The points raised have no bearing upon the case *James* v. *Davies*.

In this case a "goods vehicle" was being used to draw a trailer, i.e., a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any description whether in the course of trade or otherwise and it did not matter that goods were being carried in the trailer and not in the vehicle.

A private car used to draw a trailer in which are carried tools and materials in the course of trade never has been liable to trailer duty nor will it be liable in 1953 to a "goods and trailer licence" unless the private car itself is constructed and adapted for the conveyance of goods, i.e., the entire removal of the rear seats and structural alteration made.

The same applies to a private car used to draw a trailer to move goods on infrequent occasions or a camper conveying his camping gear comprising tent, beds, from place to place.

But a " utility vehicle," Land Rover, Estate Car, A.40 Countryman and other vehicles of this type which are constructed to carry goods, if used to draw a trailer used for the carriage of goods for hire or reward or for or in connection with a trade or business will be taxable as a goods vehicle with trailer.

The Finance Act, 1952, does not use the words " or otherwise," merely stating " trade or business."

Dudley. P. D. WADSWORTH.

Payment of Death Grants to Bodies Corporate Appointed as Executors

Sir,—We are of opinion that the effect of appointing the Public Trustee, a trustee department of a bank or other such body as an executor of a will by reason of s. 22 (4), National Insurance Act, 1946, should be brought to the notice of the profession. It would appear that such appointment results in the State refusing to pay a death grant.

Apparently, if the section and subsection are strictly construed, the State are justified in their contention and the intention of the statute cannot be taken into consideration, although it is evident that the draftsman of the Act did not intend the person, usually the residuary legatee, entitled to the benefit to be deprived of payment of the death grant merely because the testator appointed a body corporate or any unincorporated association of persons as executor. It must, we think, be assumed that the intention is that the body corporate or any unincorporated association of persons referred to in the Act are those which have provided funerals at their own expense.

The anomaly, in our view, requires an amendment of the Act.

A further matter that would appear to require attention is that an appellant from the decision of the insurance officer is precluded from being represented before the appeal tribunal by either a barrister or solicitor. Furthermore, we understand that the appeal tribunal is bound by its own decisions.

We have recently been concerned as solicitors for the Public Trustee in the administration of an estate where two brothers died within a few days of each other, our deceased, the survivor, having in the interim between his brother's death and his own death given an undertaking to the executors of his brother's will to be responsible for his brother's funeral expenses. The authorities having refused payment of the death benefit to the Public Trustee, the result is in effect that the residuary legatee, the testator's niece, will bear the funeral expenses of both her uncles without being entitled to receive in respect of either the death grant.

Harrow. BENTLEY TAYLOR & STEVENS.

THE LAW SOCIETY: ANNUAL CONFERENCE, 1952

FINAL SESSION: REPORTS OF THE CHAIRMEN OF COMMITTEES

[*Reprinted, by permission, from the* Law Society's Gazette, *November*, 1952. *For previous proceedings at the Conference, see* ante, *p.* 644 et seq.]

The PRESIDENT called on the Chairmen of the Committees which had met during the Conference to make their reports.

SCALE COMMITTEE

Mr. ROLAND MARSHALL read the following minutes of the meeting of the Scale Committee.

There were two sessions of the Scale Committee, both well attended, and at each there was, as usual, a lively discussion.

At their first session held on 23rd September the Committee considered (*a*) the liability of a lessee to pay the lessor's solicitor's costs where there is a lease at a rent and a premium; (*b*) the reduction proposed by the Government in the number of District Probate Registries; and (*c*) minimum scales of conveyancing charges.

On the first question the Chairman explained that there was no real difficulty in the case of a straightforward lease at a rent without any premium being charged. In such cases the custom throughout most of the country whereby the lessee was responsible for the whole of the lessor's solicitor's costs was not unreasonable. The difficulty arose where, say, a builder agreed to lease the land at a ground rent and to build a house upon that land. It seemed inequitable that on what was in substance a purchase of a house the purchaser should have to pay in effect four scale charges, the vendor's and the purchaser's scale charges in respect of the rent and the vendor's and the purchaser's scale charges in respect of the premium. Such, however, in the absence of a special agreement was the effect of r. 5 of the Rules applicable to Sched. 1, Pt. 2, of the Solicitors' Remuneration Order, 1883, in those areas where it was the usual custom for a lessee to be responsible for the lessor's solicitor's scale costs. The Committee agreed that it would be desirable to publish a warning to the profession in the *Law Society's Gazette*, so that solicitors acting for purchasers in such cases could consider whether they should not insert a special condition in the contract regarding the incidence of costs.

The Committee then passed to the proposed reduction in the number of District Probate Registries, the Government's suggestion being that the number should be reduced from twenty-six to nine. The meeting was unanimously against the proposal on three main grounds: the loss of personal contact with the staffs of the local registries, who were usually prepared to give helpful answers to informal inquiries; the fact that grants were obtained more speedily through the local registries than through the Principal Probate Registry; and the fact that there would so far as could be seen no real financial advantage to the Government, as some at least of the registries which it was sought to abolish were known to be run at a profit.

On minimum scales of conveyancing charges, which was the last topic discussed on Tuesday, the general view of the meeting was that the spread of 100 per cent. minimum scale should be encouraged both by the Council and by the Provincial Societies. While it was true that minimum scales could not be enforced as such by disciplinary action, but only through expulsion from the Provincial Society or by a bond which some Societies required their members to sign, it was thought that it was often still not fully realised that it is the scale of charges prevailing in the area where the land is situated which is material for the purpose of r. 2 of the Solicitors' Practice Rules, 1936, and that it is immaterial for this purpose where a solicitor happens to practise. A solicitor who quoted a fee to someone who was not his existing client which was less than the local minimum scale, and therefore less than the scale of charges prevailing in the area where the land was situated, would commit a breach of the Practice Rule and thereby be liable to disciplinary proceedings.

At the second session, held on Wednesday, 24th September, the Chairman primarily invited members to raise any matters they would like discussed. He first, however, referred to the decision of the Court of Appeal in *Bendall* v. *McWhirter* [1952] 1 All E.R. 1307, which suggested that a deserted wife may have a special right not only against her husband but also against third parties to remain in the matrimonial home, but that the right would not be registrable as a land charge. The position of mortgagees and purchasers of property belonging to married men if such doctrine were established was discussed, and it was agreed that the Council should be asked to consider the matter with a view to its being brought to the attention of the newly-formed Law Revision Committee set up by the Lord Chancellor.

The question of the introduction of minimum scales of conveyancing charges in the big cities was raised and discussed.

A plea was put forward for the use of simpler language in Acts of Parliament—a suggestion in which all heartily concurred, although it was doubted whether complex statutory provisions such as the estate duty provisions relating to director-controlled companies were capable of real simplification.

The idea that there should be a scale of charges for winding up estates was discussed and appealed to the meeting as one worthy of further consideration, and it appeared that in certain areas it was already the practice to operate an informal scale in the case of estates over or below a certain figure. The view was expressed that the Council should be asked to consider whether the Statutory Committee under s. 56 of the Solicitors Act, 1932, should be asked to formulate a scale or whether as an alternative The Law Society should itself recommend a scale which could then become the

subject of special arrangements between solicitors and personal representatives.

On the question whether solicitors should charge for the preparation of wills a fee commensurate with the work involved rather than a more or less nominal fee, the unanimous view of the meeting was that this question should be left to the discretion of the profession.

The Committee finally discussed the opinion published in the October, 1950, issue of the *Law Society's Gazette* on the appropriate charges where there is a sale of property followed by a sub-sale of the whole of the property.

The PRESIDENT: Thank you, Mr. Marshall. Does anybody with to make any comment upon that report?

Mr. R. M. BARLOW (Bury and District and Manchester) suggested that guidance should be given to the profession about the proper charge on drawing a will. Too often, in his view, a charge was made on the ten-and-sixpenny basis, when a much higher charge was justified.

The PRESIDENT undertook that the point should receive consideration by the appropriate Committee, and then read the following minutes of the meeting of the Overseas Relations Committee.

OVERSEAS RELATIONS COMMITTEE

The Chairman reported the programme of International Conferences for the coming years, which had been recommended by the Committee to the Council, approved by the Council and also accepted, on reference to them, by the General Council of the Bar. This provided for an Anglo-French Legal Conference to be held in London in 1953, for an Imperial and Commonwealth Legal Conference to be held in 1955, and for the Annual Convention of the American Bar Association to be held in England in 1957 or thereafter. A formal invitation had been extended to the profession in France, which had been accepted, although the date of the Conference remained to be settled; informal inquiries had been made about the 1955 and 1957 Conferences from which it appeared that there was likely to be keen support for both. It was felt that the ties of this country with the continent of Europe would be strengthened by the Anglo-French Legal Conference, to which it was proposed also to invite representatives of the Benelux countries; that Anglo-American relationships were fostered by the Society's participation in the work and the conferences of the International Bar Association and would be greatly strengthened were the American Bar Association to visit this country again as they had done in 1926; and that the affection and respect which was felt for the mother country in the Commonwealth and Empire would be recognised and reciprocated by an Imperial Conference.

The meeting was wholeheartedly in support of this programme of conferences and there was a general feeling that not only Provincial Law Societies but also individual solicitors throughout the country would like to be associated in contributing hospitality, especially in private homes, to visiting solicitors, above all those from the Commonwealth, whose great kindness to solicitors from this country both during the war and after had been so much appreciated. It was thought that it would be desirable that through the *Gazette* a register should be set up for those solicitors who felt prepared to accept, both during the conferences and at other times, Commonwealth or foreign lawyers into their homes or offices in the course of their visits to this country.

It was also thought that this register might extend to solicitors wishing to arrange exchanges for their children to stay abroad in the homes of foreign lawyers and to accept children from overseas in their own homes. The Council have received a number of such inquiries.

The PRESIDENT: Does anybody wish to comment on that report? Very well, then, we will pass to Legal Aid: Mr. Davies,

LEGAL AID COMMITTEE

Mr. ERIC DAVIES read the following minutes:—

The Chairman outlined to a well attended meeting some of the duties and tasks which the Legal Aid Committee were called upon to undertake in administering the Legal Aid Scheme. He gave the meeting details of how the Legal Aid Committee fitted into the general administrative organisation, and in reviewing the progress of the scheme during the past twelve months drew attention to some of the statistical figures contained in The Law Society's Annual Report. The Chairman reminded the meeting of the recent decision in *Gibbs* v. *Gibbs* [1952] 1 All E.R. 942, which has done much to clarify obscurities in the law relating to the taxation of bills on a solicitor and client [common fund] basis.

Although the Chairman invited discussion after his address upon any points arising out of the Act, the scheme or the regulations, the subsequent discussion in fact was largely directed to the question of costs. It was clear that the feeling of the meeting was that Taxing Masters and District Registrars were not yet fully conversant with the principles laid down in *Gibbs* v. *Gibbs*, and that as a result of this many bills were being taxed at figures below their true worth.

A number of speakers referred to the unfair results which arose from the refusal of Taxing Officers to allow items for the attendance of country solicitors at the trial of a cause in London. It was pointed out, however, that under the discretionary principles introduced in *Gibbs* v. *Gibbs* it might well be possible to argue that, even though such a charge was unacceptable in bills taxed on a party and party basis, a discretion should be exercised in the solicitor's favour where the taxation is on a solicitor and client [common fund] basis.

A suggestion was made by a number of speakers that a fixed scale of charges could be introduced for undefended matrimonial causes. It was thought that some system of fixed costs would do much to relieve the burden of having to tax every bill covered by a civil aid certificate. On the other hand it was pointed out that the adoption of such a system might have some undesirable consequences. The meeting was interested to hear that in one of the large provincial cities a *pro forma* bill of costs for legal aid undefended matrimonial causes had been drafted which contained all the usual items and enabled any additional items to be included merely by adding another sheet and this *pro forma* had been sent to the local Law Society for consideration.

The question of the amounts allowed on taxation for service of orders for costs was raised. It was pointed out that solicitors acting for assisted persons were under an obligation to enforce orders for costs and that this obligation meant that they were required to serve the order personally upon the respondent. It was clearly the experience of many of those attending the meeting that the service of these orders often entailed a great deal of work, and as the item was included in the bill in anticipation the amount of work involved was unknown and the allowances therefore almost inevitably inadequate. The Chairman indicated that the Legal Aid Committee were fully aware of this problem and steps had already been taken towards preparing and agreeing with the taxing authorities a scale of process servers' fees.

In answer to a protest by one of the speakers against the continued inadequacy of the allowance to solicitors in criminal cases, the Chairman informed the meeting that as recently as July a deputation from The Law Society and the Bar Council had attended upon the Home Secretary, with the object of endeavouring to persuade the Government to bring into force s. 21 of the Legal Aid and Advice Act, 1949, which would have the effect of providing fair remuneration in criminal cases for work actually and reasonably done.

Several speakers again drew attention to the difficulties and anomalies which arise from the delay in bringing into force the whole of the complete scheme for which the Legal Aid and Advice Act made provision. This is, of course, a matter which has several times been referred to in the reports which the Council has made on the working of the scheme.

The PRESIDENT: Does anyone wish to comment upon that report? If not, will Sir Sydney Littlewood deal with Town and Country Planning?

TOWN AND COUNTRY PLANNING COMMITTEE

Sir SYDNEY LITTLEWOOD: Mr. President, ladies and gentlemen,—Before I read this report, I would like to point out that there is one difference in this report, one way in which this report differs from the others, or in which the meeting differed from the others. The sole object of the Town and Country Planning Committee was to collect the experience and wisdom of solicitors who work in the matter of town planning, to enable the Council to place that experience in the hands of the Legislature in order that this very difficult Act may be improved for the benefit of the country.

This is the report: This was a well attended meeting and constructive suggestions were made which will be of considerable use to the Council in preparing their further contemplated memorandum to the Government. The Chairman said that the Council had come to the conclusion that this was a propitious time for submitting this further memorandum, as he had reason

to believe that the Government would welcome suggestions from The Law Society on all matters other than development charges. As to development charges, the Council would carefully consider whatever legislation was brought forward by the Government (which would presumably not be long delayed), but until that occurred it would be pointless to make further observations to the Ministry.

One suggestion which received almost unanimous approval was that, unless development is likely to take place within ten or fifteen years, it should not be included in the local development plan. To include development which might not occur for fifty or a hundred years unduly sterilised land. Special considerations would, however, have to be applied to minerals, but opinions were divided on whether there should be a time limit of longer duration beyond which proposed mineral working should not be taken into account in preparing development plans.

It was further agreed that where an order is revoked or modified the parties should be put in as good a position financially as if the order had never been made. There should in other words be a complete indemnity in respect of all abortive expenditure. At present, in certain cases, architects' fees, etc., were disallowed for compensation purposes, unless they had actually been paid.

It was thought that further publicity should be given to development plans. If a landowner resided in a different part of the country, the local publication of the plan where the land was situated might not be drawn to his attention. Landowners directly affected should be given specific notice.

On the question of compensation for disturbance, the meeting was strongly of opinion that to base the compensation on 1939 values plus in certain cases a percentage, as is the case in respect of development areas under the Town and Country Planning Act, 1947, is wrong in principle and should be abandoned. Compensation should always be on current values. In making this recommendation the meeting fully realised that this would entail retrospective payments to those who had already been paid compensation on the 1939 basis and that this would be an expensive matter.

A topic which was discussed at some length was the appeal procedure against the refusal of planning permission. It was the unanimous opinion that there should be independent inspectors, whose reports should be published, and that in the event of the Minister not accepting an inspector's report and refusing planning permission he should publish his reasons for so doing.

Opinions were very divided on the question whether there should be a right of appeal to a tribunal or to the courts, and amongst those who favoured a right of appeal there was no general agreement as to whether the High Court, the county court, quarter sessions or the Lands Tribunal would be the most appropriate body.

On control of advertisements, the view was that the general principles of control must remain but that there should be further relaxation of the present degree of control; permission should always be granted unless a valid reason for refusal could be advanced but there was a tendency at present for permission to be refused unless the person asking for permission gave reasons for his request which were regarded as valid by the planning authority.

On s. 14 (2) (*a*) of the Town and Country Planning Act, 1947, it was agreed that representations should be included in The Law Society's further memorandum to the effect that the right to develop land should not normally be made dependent on works being carried out on other land—for example, a right to work surface minerals should not be made dependent on pits or quarries which had long been derelict being filled in before further working starts.

Ladies and gentlemen, that is the end of my written report; but I would like to add this, that we were in session for the whole period allocated to us. I know that there were other suggestions which could have been made, and some have been made since. If any of you now present, whether you were at that meeting or not, have any suggestions which your experience has shown you will improve the planning provisions of the Act, the Council would be very grateful if you will send them to the Secretary. Work on the memorandum will commence at once and we want the memorandum to be as complete as the combined experience of the profession makes possible.

The PRESIDENT: Are there any observations upon that report?

Mr. B. S. MINCHIN (Tunbridge Wells) hoped that the profession would not go on record as being opposed to any long-term town planning. Circular No. 59 of the Ministry of Housing and Local Government, para. 5, suggests as a general guide that local planning authorities should limit themselves to reasonably firm proposals and not include them in development plans unless they see a likelihood of their being carried out within about twenty years; this should not, however, exclude proposals which are of such significance that land ought to be reserved for them even if they cannot be carried out within twenty years. In his view it would be unfortunate if solicitors were to go even further than that guarded and careful limit, and put a shorter and absolute limit which would in effect make long-term planning and reasonable traffic provision for the future very difficult to achieve.

The PRESIDENT: Does anybody else wish to speak on that report? Then last, but not least, we come to the Articled Clerks' Committee: Sir Edwin Herbert.

ARTICLED CLERKS' COMMITTEE

Sir EDWIN HERBERT: We had a well attended meeting and an excellent discussion: indeed, during the course of last night's dance I was told by an articled clerk who was present at our meeting as a guest that he was surprised to hear so much sense talked. That tribute from the young to the ancients was very much appreciated by me, and I feel sure that that young man will go a long way.

This is the report: The Chairman stated that the Committee had recently submitted a report, which had been accepted by the Council, containing recommendations for certain changes in the Society's Final Examination and in the general training of articled clerks, which could be summarised as follows:—

(*a*) The substitution of one language other than English in the place of Latin as an obligatory subject in the Preliminary Examination and in examinations exempting therefrom.

(*b*) The reduction in the term of articles to three years for graduates in Commerce and Economics.

(*c*) The abolition of the concession whereby persons who have passed the examination for the General Certificate of Education at a certain standard may serve under articles for four and a half years only.

(*d*) Exemption from the Law portion of the Intermediate to be granted to graduates in Arts, Economics and Commerce.

(*e*) A change in the final syllabus so as to provide for five compulsory papers and eight optional papers (two to be offered by each candidate).

The Chairman said that the Committee accepted the criticism that the Final Examination at present attempted too much and at the same time achieved too little; he explained the reasons which had led the Committee to reach their recommendations; there was no ideal solution to the problem of the Final Examination—many suggested changes seemed admirable until, upon consideration from one particular aspect or another, they were found to be impracticable.

A full and interesting discussion ensued from which it appeared that the general scheme put forward by the Committee had the approval of the meeting. Regret was, however, expressed that criminal law was no longer to be included in the final syllabus (save to the extent that it appeared under the heading of Magisterial Law), so that under the proposed new syllabus it would be possible for a solicitor who was exempted from the law portion of the Intermediate Examination to qualify without having at any time studied or been examined in criminal law. There was also a considerable difference of opinion upon the proposal to exclude Latin as an obligatory subject in the Preliminary Examination. In favour of the retention of Latin it was argued that a knowledge of Latin aided a solicitor not only in a study of civil law and of the Law Reports but also in thinking and writing clearly and logically; a study of Latin provided first-rate mental training. On the other hand it was said that, while a classical education was undoubtedly an advantage to a solicitor, the acquisition of the requisite amount of Latin necessary to pass the Preliminary Examination served no particular purpose and indeed was even in some cases detrimental to the general education of the prospective articled clerk; moreover, the retention of Latin as an obligatory subject often places obstacles in the way of the schools by compelling intending solicitors to specialise at an early age. This reflected previous discussion in the Committee and when the report of the Committee had been before the Council.

The PRESIDENT: Does anybody wish to make any observations on that report? Very well, before we come to the next part of the programme, namely. the various formal resolutions which

are to be passed, I want to make one announcement, which is about this Conference in the future. The Annual Conference Committee met yesterday and decided to recommend to the Council that the Annual Conference next year should be held in Scarborough. The Council will consider that matter at an early date, and, without wishing to pre-judge what they may say, I anticipate that they are likely to follow the advice of their Committee.

[The meeting then concluded with the passing of a number of votes of thanks.]

NOTES OF CASES

COURT OF APPEAL

LANDLORD AND TENANT: UPPER FLOORS SUB-LET BY STATUTORY TENANT: RIGHT OF LANDLORD TO POSSESSION

Crowhurst *v.* Maidment

Evershed, M.R., Romer, L.J., and Harman, J.
21st October, 1952

Appeal from Marylebone County Court.

The defendant, while a contractual tenant of a house, sub-let the first and second floors to persons not before the court. He became a statutory tenant in 1951. A claim for possession by the landlord of the first and second floors, which were not self-contained, was rejected by the judge. The landlord appealed.

EVERSHED, M.R., said that the tenant contended that, by virtue of s. 15 (1) of the Rent Act of 1920, he was entitled to protection so long as he retained possession; and as he had rightfully sub-let during the contractual tenancy he had the right to continue to do so. But there was a principle inherent in the Acts, that their purpose was to protect occupants in the occupation of their homes, and nothing more. *Skinner* v. *Geary* [1931] 2 K.B. 546 showed that a person not in occupation of the subject-matter of the former contractual tenancy could not claim the benefit of the Acts. In *Barrell* v. *Fordree* [1932] A.C. 676 the tenant had sub-let part of the subject-matter of the contractual tenancy for non-protected purposes; this part was not separate, and it was held that it was taken out of the Acts. In *Murgatroyd* v. *Tresarden* [1947] 1 K.B. 316 the landlord succeeded, and the only distinction between that case and the present was that the sub-let portion was self-contained. But there was no logic or authority which made that distinction conclusive. In fact there had been created such a sub-division that there were three dwelling-houses. The defendant could only claim protection for the part which he occupied himself. There was no objection to making an order for possession against the defendant, as the sub-tenants were protected by s. 15 (3) of the Act of 1920.

ROMER, L.J., and HARMAN, J., agreed. Appeal allowed.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *D. J. Hyamson* (*Adam Burn & Son*); *D. Wild* (*John M. Morris & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

FACTORY: CIRCULAR SAW: WOODWORKING MACHINERY REGULATIONS, 1922

Watson *v.* British Thomson-Houston Co., Ltd.

Somervell, Jenkins and Hodson, L.JJ.
31st October, 1952

Appeal from Parker, J. ([1952] 1 T.L.R. 1232; *ante*, p. 314).

The plaintiff was in charge of the operation and adjustment of a circular saw in the defendants' works. At the back of the saw was a curved riving knife, which was adjustable, and which kept the cut portions of the wood apart and acted as a fence for the operator. For safety it was necessary that the curve of the knife should be adjusted as closely as possible to that of the saw. The machine was capable of taking saws up to 24-inch diameter, and such saws were always purchased, but would wear down in time until they were replaced by a new saw. In March, 1950, while the plaintiff was endeavouring to clear a jamb, two of his fingers were caught in the saw and severed. As a result of wear the diameter of the saw was 19½ inches, a replacement having been much delayed in delivery; while the radius of curvature of the knife was 12 inches, as applicable to a new 24-inch saw, the gap between the knife and saw at bench level was under ½ inch; a few inches higher it was about 1¼ inches, as the result of the difference of curvatures. The plaintiff brought an action alleging negligence in that the system of working was unsafe owing to the differing radii, and also alleging a breach of the Woodworking Machinery Regulations, 1922, which provide, by reg. 10: "Every circular saw shall be fenced as follows: . . . (*b*) Behind and in a direct line with the saw there shall be a riving knife, which shall . . . conform to the following conditions: (i) The edge of the knife nearer the saw shall form an arc of a circle having a radius not exceeding the radius of the largest saw used on the bench; (ii) The knife shall be maintained as close as practicable to the saw, having regard to the nature of the work being done at the time, and at the level of the bench table the distance between the front edge of the knife and teeth of the saw shall not exceed half an inch." Parker, J., dismissing the action, held that 24-inch saws were used within the meaning of the regulation; that the defendants were not in breach and were not negligent. The plaintiff appealed.

SOMERVELL, L.J., said that the regulations contemplated a case in which the radius of curvature of the saw was less than that of the knife. Parker, J., was entitled to conclude that it could not be said that 24-inch saws were not being used, because they wore down in the course of time. The test imposed by the regulations was not the diameter of the saw at any particular time; if that were so, a new riving knife would have to be fitted every time the saw wore down half an inch, a requirement which the regulation as framed was not apt to impose. Accordingly there had been no breach and the appeal must be dismissed.

JENKINS and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *F. Denny* (*Rowley Ashworth & Co.*); *M. Berryman*, Q.C., *J. Bassett*, Q.C., and *M. J. Anwyl-Davies* (*Stuart H. Lewis*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

HOUSING: CLOSING ORDER: WHETHER HOUSE A PART OF A BUILDING

Birch *v.* Wigan Corporation

Evershed, M.R., Denning and Romer, L.JJ.
3rd November, 1952

Appeal from Wigan County Court.

The plaintiff owned a row of six small houses about 200 years old; three of these were so dilapidated that they were unfit for habitation or reconstruction; but, if they were demolished, the remaining three houses would be deprived of necessary support. The corporation made a closing order in respect of the three unfit houses, under s. 12 of the Housing Act, 1936, as they wished them to remain so as to afford support to the others. The plaintiff contended that they had no jurisdiction to do so, but must make a demolition order under s. 11. By s. 11: "(1) Where a local authority . . . are satisfied that any house which is occupied . . . is unfit for human habitation and is not capable at a reasonable expense of being rendered so fit, they shall serve upon the person having control of the house . . . notice of the time . . . and place at which the condition of the house . . . will be considered by them . . ."; then, unless a satisfactory undertaking is given, or the requisite works carried out "(4) . . . the authority shall forthwith make a demolition order. . . ." By s. 12: "(1) A local authority may . . . take the like proceedings in relation to any part of any building which is occupied . . . or in relation to any underground room . . . as they are empowered to take in relation to a house, subject, however, to this qualification that, in the circumstances in which, in the case of a house, they would have made a demolition order, they shall make a closing order . . ." and subs. (2) defines the conditions under which an underground room shall be deemed unfit for habitation. The judge held that an individual house, though part of a row, was not a "part of a building" within s. 12, and that the corporation had no power to make a closing order. The corporation appealed.

EVERSHED, M.R., said that the appeal would be dismissed for the reasons to be stated by Romer, L.J.

DENNING, L.J., dissenting, said that Parliament could never have intended to enact anything so absurd as to make it obligatory to demolish three unfit houses, so that three fit ones

should become unsafe. When houses were in a row, each house was " part of a building " for the purposes of s. 12, and a closing order could be made. That was the reasonable construction of the Act.

ROMER, L.J., said that the judgment below was right, for four reasons: (1) whether or not the unsound houses fell within s. 12, they certainly fell fair and square within s. 11; that section provided a comprehensive and compulsory code for the position which had arisen, and the corporation was bound to act under it; (2) the Legislature could not have intended to confer an alternative option to make a closing order under s. 12, because that was inconsistent with the unequivocal obligations of s. 11; (3) the provisions of both sections were mandatory when a position arose for their application; so that, if the corporation were right as to s. 12, they must also make a demolition order under s. 11; which showed that the two sections were mutually exclusive; (4) the change of language from " house " of s. 11 to " part of a building " in s. 12 showed that the two sections were dealing with different things. If the true construction of the Act produced results which were unexpected and inconvenient that was a matter for legislation.

Appeal dismissed.

APPEARANCES: *H. S. L. Rigg* (*Ruston, Clark & Ruston*, for *A. Royle*, Town Clerk, Wigan); *W. D. T. Hodgson* (*Gregory, Rowcliffe & Co.*, for *Hall, Brydon & Co.*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CUSTODIAN OF ENEMY PROPERTY: WHETHER SERVANT OR AGENT OF CROWN

Bank voor Handel en Scheepvaart *v.* Slatford

Evershed, M.R., Denning and Romer, L.JJ.

4th November, 1952

Appeal from Devlin, J. ([1952] 1 T.L.R. 341; *ante*, p. 151).

The plaintiff bank, a Dutch corporation, was in 1939 wholly owned by a Hungarian national. In July, 1940, a quantity of gold held by the bank in London was transferred to the Custodian of Enemy Property, who sold it. In April, 1950, the proceeds of sale, less the custodian's fee, were transferred to the Administrator of Hungarian Property. The bank brought an action against the custodian and the administrator, claiming the proceeds of sale. At the trial, Devlin, J., gave judgment for the custodian, but held that the bank was entitled to recover from the administrator the amount received from the custodian, together with interest or other profits earned (see [1951] 2 T.L.R. 755; 95 SOL. J. 546). The case came on for further consideration on a claim by the bank for a further sum of some £76,000, representing income tax paid by the custodian on profits made by him. It was claimed for the bank that the custodian, as a servant of the Crown, was not liable to such tax and should not have paid it. Devlin, J., held that the custodian was an official, whose duties brought him within the sphere of two ancient Crown prerogatives, of making war and taking enemy property, on which question *Austrian Administrator* v. *Russian Bank for Foreign Trade* (1932), 48 T.L.R. 37, was conclusive; so that the custodian was not liable in respect of income tax and should not have paid it; with the result that the plaintiff bank's claim succeeded. The administrator appealed.

EVERSHED, M.R., said that the custodian was not one of the great historic officers of state whose position naturally invested them with Crown immunity. The view of Devlin, J., that income in the custodian's hands was Crown income, applicable exclusively for the public purposes of the Crown, could not be supported. While in his hands, the funds were not confiscated, and the rights of the plaintiff bank were in " statutory suspense " (*In re Munster* [1920] 1 Ch. 268). Accordingly, the funds were not held by the custodian exclusively for public purposes; the purposes were of preservation, as defined by statute, and were quite distinct from the prerogative of making war or peace. The measures taken were no doubt war measures; but not all such measures were manifestations of the war-making prerogative, as the requirements of total war required many kinds of measures to be taken by numerous officials who could not be said to be invested with Crown immunity. The *Austrian Administrator* case, *supra*, must be distinguished, as the office there concerned was created to give effect to a treaty of peace made in accordance with the prerogative. Accordingly, the custodian was properly assessable to income tax. The deduction of tax did not affect either the personal or prerogative rights of the Crown. The appeal should be allowed.

DENNING and ROMER, L.JJ., agreed. Appeal allowed.

Leave to appeal to the House of Lords.

APPEARANCES: *Sir Lionel Heald*, Q.C. (A.-G.), *J. H. Stamp*, *J. P. Ashworth* and *R. J. Parker* (*Solicitor, Board of Trade*); *Charles Russell*, Q.C., and *M. Littman* (*Hardman, Phillips & Mann*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

PRACTICE NOTE: APPEALS FROM QUARTER SESSIONS: EXTENSION OF TIME

Slade and Havers, JJ. 4th November, 1952

Order 59, r. 30 (2), dealing with appeals to the Divisional Court from quarter sessions by case stated, provides: " No such appeal shall be entered for hearing after the expiration of six months from the date of the judgment . . . except by leave of the Divisional Court on special circumstances being shown." An application was made to set down an appeal out of time, the delay being due to the inadvertence of the applicant's solicitors.

SLADE, J., said that the question was whether a lay client, ignorant of procedure, was to suffer in a criminal matter on account of the negligence or inadvertence of the solicitors concerned, or whether such conduct could amount to " special circumstances " within the rule. It was considered that such conduct could, and in the present case did, amount to such " special circumstances "; but that did not mean that such applications would always be granted whenever there had been negligence or inadvertence on the part of the solicitors.

HAVERS, J., agreed. Application granted.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: CONTROL OF ADVERTISEMENTS

Dominant Sites, Ltd. *v.* Hendon Corporation

Lord Goddard, C.J., Finnemore and McNair, JJ.

7th November, 1952

Case stated by Middlesex quarter sessions.

In 1936 the respondent corporation made a town-planning scheme under powers conferred by the Town and Country Planning Act, 1932. By the scheme certain land was specified as land protected in respect of advertisements, the effect being that the corporation had power under the scheme and s. 47 of the Act to require the removal of any advertisement or hoarding, subject to a right of appeal to petty sessions, which were required to allow the appeal if satisfied that the advertisement did not " seriously injure the amenity " of the land specified in the scheme. By s. 31 of the Town and Country Planning Act, 1947, which came into force on 1st July, 1948, power was given to the Minister to make regulations for the control of advertisements by the local planning authority; such regulations might be made to apply to advertisements being displayed when they came into force. By Sched. X it was further provided that, notwithstanding the repeal of the Act of 1932, s. 47, and any scheme made thereunder relating to, *inter alia*, the control of advertisements should continue in force until determined by an order of the Minister. No such order had been made. On 1st August, 1948, the Town and Country Planning (Control of Advertisements) Regulations, 1948, made under s. 31 of the Act of 1947, came into force, which placed the control of advertisements in the hands of the local planning authority. Persons aggrieved were required to appeal to the Minister and there was no recourse on the merits to petty sessions. On 8th July, 1948, the appellants erected advertisement hoardings on the scheduled lands. On 1st July, 1951, the corporation as the authorised agents of the planning authority (the county council) served enforcement notices under the regulations of 1948 on the appellants requiring them to remove the hoardings. Before quarter sessions, the appellants contended that the regulations of 1948 did not apply to the hoardings, as they were governed by the local scheme and s. 47 of the Act of 1932, so that the appellants had a right of appeal to petty sessions. The corporation contended that the local scheme and the regulations of 1948 were not mutually exclusive, and that both were in force in respect of the land in question. Quarter sessions accepted

this contention, and held that the enforcement notices were valid.

McNAIR, J., said that he would assume, without deciding, that the scheme and s. 47 of the Act of 1932 were still in force. But it was quite clear that s. 31 of the Act of 1947 enabled regulations to be made so as to apply to advertisements on land which had been specified under a scheme made under the Act of 1932. The provision that regulations might be made "so as to apply to advertisements which are being displayed on the date when the regulations came into force" excluded the possibility of any implied exemption in respect of advertisements covered by existing town-planning schemes. Further, the "responsible authority" under s. 47 of the Act of 1932 was a different body from "the local planning authority" under s. 31 of the Act of 1947. Accordingly, the corporation had power to act as they had done as agents for the local planning authority, and the appeal failed.

LORD GODDARD, C.J., agreed.

FINNEMORE, J., dissenting, said that Sched. X to the Act of 1947 provided that s. 47 of the Act of 1932 and schemes made thereunder should continue in force, and it could not be said that the regulations of 1948 could apply at the same time.

Appeal dismissed.

APPEARANCES: *A. M. Lyons*, Q.C., and *S. W. Magnus* (*Hall, Brydon, Egerton & Nicholas*); *J. T. Molony* (*Leonard Worden*, Town Clerk, Hendon).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

HUSBAND AND WIFE: JUSTICES: DISMISSAL OF PREVIOUS SUMMONS: EVIDENCE OF MATTERS BEFORE DISMISSAL

Richards *v.* Richards

Lord Merriman, P., and Davies, J. 23rd October, 1952

Appeal to the Divisional Court.

The parties were married in 1938. The wife issued a summons on the grounds of persistent cruelty on 5th January, 1952, which was dismissed on 31st January, 1952. On 27th May, 1952, she issued a further summons on the same ground which was heard on 3rd July, 1952. At the hearing of the second summons an attempt was made to adduce evidence of alleged acts of violence which had taken place before the hearing of the first summons. The justices interposed and refused to hear this evidence, holding that the court had no power to accept evidence of allegations prior to 31st January, 1952. The summons was dismissed.

LORD MERRIMAN, P., referred to observations which he had made in *Molesworth* v. *Molesworth* [1947] 2 All E.R. 842, at pp. 844, 845, to the effect that "in a charge of persistent cruelty, the conduct which is alleged within the period of the summons which is being dealt with to amount to persistent cruelty can only be judged in the light of the whole course of conduct and the mere fact that at an earlier stage when the conduct was only partly completed a court has adjudged that at that point it does not amount to persistent cruelty does not shut that evidence out forever any more than it does in certain cases of desertion." In *Jones* v. *Jones* (unreported), 25th October, 1951, a case of constructive desertion, a similar point had arisen and the same principle was held applicable, unless the earlier case had been disposed of on the footing that the wife had not been telling the truth at all. In the present case the question of whether a charge of persistent cruelty had been made out must be decided by the justices upon evidence of the whole course of conduct which was alleged to constitute persistent cruelty.

DAVIES, J., concurred. Appeal allowed. Order for rehearing.

APPEARANCES: *D. R. Ellison* (*Thompson, Quarrell & Megaw*, for *Blythe, Owen George & Co.*, Coventry); *J. D. F. Moylan* (*Sharpe, Pritchard & Co.*, for *S. G. Ansell & Co.*, Coventry).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: PRACTICE: PETITION FOR DECLARATION ONLY

Har-Shefi *v.* Har-Shefi

Barnard, J. 29th October, 1952

Summons adjourned into court for judgment.

The parties were married at the office of the Chief Rabbinate in Tel Aviv, Israel, in January, 1950, the wife being at that time domiciled in England. They lived together in London for a time and the husband then returned to Israel, which was then and which remained the country of his domicile. A Jewish bill of divorcement was received by the wife at the Beth Din, the court of the Chief Rabbi in London on 6th September, 1951. In May, 1952, the wife presented a petition in which she alleged that the bill of divorcement was valid to dissolve the marriage according to the laws of Israel, the domicile of the parties at the time. The petition claimed no relief other than a declaration that the marriage had been validly dissolved. An appearance was entered by the husband stating that he wished to defend the case, and in a letter to the court he maintained that the divorce was contrary to the law of Israel and the law of England. The petition, which was not accepted by the registry, came before the judge *ex parte*. Reliance was placed on r. 80 of the Matrimonial Causes Rules, 1950, by which, subject to the provisions of those rules, the Rules of the Supreme Court are applicable to the practice and procedure in any matrimonial cause or matter, and upon R.S.C., Ord. 25, r. 5, whereby "No action or proceeding shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is claimed or not."

BARNARD, J., distinguished *Schuck* v. *Schuck* [1950] W.N. 264; 66 T.L.R. (Pt. I) 1179, and *Igra* v. *Igra* [1951] P. 404, in which declarations that the marriages had been validly dissolved were made, on the ground that both cases had been based on properly constituted petitions for jactitation of marriage. He (his lordship) had come to the conclusion that R.S.C., Ord. 25, r. 5, did not in any way extend the jurisdiction of the court to entertain a petition which merely sought a declaration that a foreign decree of divorce was valid. The petitioner was in effect seeking a declaration of nullity, on the ground that her marriage had been validly dissolved, and it had been submitted on her behalf that as the wife was resident in England she was entitled to come to the English courts to ascertain whether or not she had a married status according to the law of England. The proper court to adjudicate upon the validity of the divorce of the 6th September, 1951, was that of the domicile and the English court had, therefore, no jurisdiction in the matter. The summons and the petition were dismissed.

APPEARANCES: *William Latey*, Q.C., and *John Mortimer* (*G. Parry Jones*, Law Society Divorce Department).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.]

CENTRAL CRIMINAL COURT

CRIMINAL LAW: MISLEADING PROSPECTUS: RECKLESS STATEMENTS

R. *v.* Bates and Russell

Donovan, J. 23rd September, 1952

Preliminary point at trial on indictment.

The Prevention of Fraud (Investments) Act, 1939, provides by s. 12 (1): "Any person who, by any statement, promise or forecast which he knows to be . . . false . . . , or by any dishonest concealment of material facts, or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person" to invest money, commits an offence. The defendants were brought to trial on an indictment of which count 1 alleged dishonest concealment of material facts, count 2 alleged the making of a statement known to be untrue, and count 3 stated: "Recklessly attempting to induce persons to invest money" in that the defendants, in a letter specified, "recklessly" made a forecast of the profits of S, Ltd., "which was misleading and deceptive." The prosecution contended that the defendants, although acquitted of dishonesty under counts 1 and 2, could be convicted of recklessness on count 3, even if it fell short of dishonesty. The defence contended that if recklessness fell short of dishonesty, count 3 alleged an offence unknown to the law, so that the whole indictment was bad.

DONOVAN, J., said that he was not constrained by *Derry* v. *Peek* (1889), 14 App. Cas. 337, to decide that "reckless" in s. 12 (1) meant something dishonest. The defence had contended that the preamble to the Act and the cross-heading to the section showed that fraud or dishonesty must be proved; and, if there were any ambiguity, such things might be taken into account in arriving at a true construction. The subsection dealt with three categories of persons, the first two of which were dishonest. Then the language changed and a third category was introduced by the disjunctive "or." If "reckless" meant something

dishonest, why did not the Legislature repeat that word? The ordinary meaning of "reckless" was "careless" or "heedless," and it ought to be so construed unless it clearly bore a restricted meaning. It was said, and with force, that Parliament could not have intended that conduct which would not even support a civil action for deceit should involve a sentence of seven years. But while it was easy in any one case to prove that statements of fact and concealments were deliberate and dishonest, it was otherwise with forecasts; it might often be difficult to bring to justice a man who made a forecast dishonestly. It was, accordingly, understandable that Parliament decided to go a step further with forecasts and to ensure that even prophets who were not dishonest should take care to see that their forecasts were not misleading. Accordingly, "reckless" ought not to be construed as reckless and dishonest, but as covering the case where there was a high degree of negligence without dishonesty. Judgment for the prosecution.

APPEARANCES: *Sir R. Manningham-Buller*, Q.C. (S.-G.), *R. C. Vaughan*, Q.C., *N. Faulks* and *P. Syrett* (*Solicitor, Board of Trade*); *G. Gardiner*, Q.C., and *S. Shaw* (*E. P. Rugg & Co.*); *F. H. Lawton* and *R. Day* (*Claude Hornby & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Emergency Laws (Miscellaneous Provisions) Bill [H.L.] [20th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Abortion Bill [H.C.] [19th November.
To amend the law relating to abortion.

Agricultural Land (Removal of Surface Soil) Bill [H.C.] [20th November.
To make it an offence to remove surface soil from land in certain circumstances; and for purposes connected therewith.

Criminal Justice (Amendment) Bill [H.C.] [19th November.
To amend the Criminal Justice Act, 1948, in respect of corporal punishment.

Dogs (Protection of Livestock) Bill [H.C.] [19th November.
To provide for the punishment of persons whose dogs are found straying, or not under control, on enclosed agricultural land where there is livestock or on certain areas of open country; and for purposes connected with the matter aforesaid.

Foundry Workers (Health and Safety) Bill [H.C.] [19th November.
To make provision for the better protection of the health and safety of persons engaged in the ironfounding industry; and for purposes connected with the matters aforesaid.

Game (Duck and Geese) Bill [H.C.] [19th November.
To amend certain enactments relating to game for the protection of wild duck and wild geese.

Her Majesty's Civil Service Appointments Board Bill [H.C.] [19th November.
To establish an Appointments Board for certain senior posts in Her Majesty's Civil Service; to clarify certain nomenclature applicable to officers of the aforesaid service; and to make further provision for purposes connected with the matters aforesaid.

Law Reform (Personal Injuries) (Amendment) Bill [H.C.] [19th November.
To amend section two of the Law Reform (Personal Injuries) Act, 1948, in relation to the assessment in Scotland of damages for death.

Local Government (Miscellaneous Provisions) Bill [H.C.] [19th November.
To amend the law relating to local authorities and to amend section seventy-two of the Road Traffic Act, 1930, as regards the provision of omnibus shelters and the rights of local authorities in connection therewith.

National Insurance (Industrial Injuries) Bill [H.C.] [19th November.
To remove certain limitations upon the payment of benefits out of the Industrial Injuries Fund.

Navy and Marines (Wills) Bill [H.C.] [19th November.
To amend the law with respect to the operation of wills made by members of the naval and marine forces; and for purposes connected therewith.

Pharmacy Bill [H.C.] [19th November.
To amend the law relating to Pharmacy and for purposes consequential on such amendment.

Press Council Bill [H.C.] [19th November.
To establish a General Council of the Press; and for purposes connected therewith.

Protection of Animals (Amendment) Bill [H.C.] [19th November.
To extend the powers of the courts to disqualify for keeping animals persons convicted of cruelty to them.

Protection of Animals (Penalties) Bill [H.C.] [19th November.
To increase the maximum fine for offences of cruelty to animals under section one of the Protection of Animals Act, 1911, from twenty-five pounds to one hundred pounds.

Road Transport Lighting (Amendment) Bill [H.C.] [19th November.
To amend the Road Transport Lighting Acts, 1927 and 1945; and for purposes incidental thereto.

Road Transport Lighting (Rear Lights) Bill [H.C.] [19th November.
To amend the law in relation to the rear lighting of road vehicles; and for purposes connected therewith.

Simplified Spelling Bill [H.C.] [19th November.
To make provision for the determination of a suitable system of simplified spelling and for the investigation of the improvements in the reading ability of children likely to result from the introduction of the system; to facilitate the subsequent introduction of the system in certain schools; and for purposes connected therewith.

Sunday Observance Bill [H.C.] [19th November.
To repeal the Sunday Observance Acts, 1625 to 1780, and to make provision for the regulation of certain activities on Sunday.

Town and Country Planning Bill [H.C.] [18th November.
To abolish development charges under the Town and Country Planning Act, 1947, and the Town and Country Planning (Scotland) Act, 1947, subject to certain savings and special provisions; to provide, subject to certain savings and special provisions, that the payments required by sections fifty-eight and fifty-five of those Acts respectively shall not be made and to make certain provision as to claims for and rights to receive such payments; to make provision as to the acquisition of land by the Central Land Board under sections forty-three and forty of those Acts respectively; to revoke Regulation 6 of the Town and Country Planning (Modification of Mines Act) Regulations, 1948, and Regulation 5 of the Town and Country Planning (Modification of Mines Act) (Scotland) Regulations, 1948; to suspend the operation of section thirty of the Mineral Workings Act, 1951; and for purposes connected with the matters aforesaid.

Toy Weapons Bill [H.C.] [19th November.
To prohibit the offering for sale or the sale of toy weapons calculated to incite to acts of violence.

Women's Disabilities Bill [H.C.] [19th November.
To remove certain legal disabilities of women.

Read Second Time:—

Expiring Laws Continuance Bill [H.C.] [18th November.
Transport Bill [H.C.] [18th November.

Read Third Time:—

Public Works Loans Bill [H.C.] [21st November.

In Committee:—

Civil Contingencies Fund Bill [H.C.] [21st November.
Colonial Loans Bill [H.C.] [21st November.

B. QUESTIONS

COUNTY COURTS (STAFF)

The ATTORNEY-GENERAL stated that the increase in total staffs for county court offices from 1,728 in 1951–52 to 1,745

in 1952–53 was due to the fact that the business of these courts had increased by more than 18 per cent.

The travelling expenses of registrars and bailiffs had also increased from £54,099 in 1951–52 to £67,000 in 1952–53, due to their additional travelling. [17th November.

Building Licensing Limits (Changes)

The Minister of Works stated that on 1st July last the free limit for housing and general work had been raised from £100 to £200 in a period of twelve months. He now proposed to alter the licensing period to the calendar year. The current licensing period, for which the limits were £500 for industrial and agricultural buildings and £200 for all other buildings, would be brought to an end on 31st December next. This meant that the full amounts would be available during the period of six months. For the calendar year 1953 the free limits would be for industrial and agricultural buildings £2,000, and for all other buildings, £500. [18th November.

Town and Country Planning Act, 1947, s. 113 (4)

Sir Wavell Wakefield asked whether, in view of the failure up to date to implement the provisions of s. 113 (4) of the Town and Country Planning Act, 1947, the Minister would undertake to arrange for its amendment in any future legislation relating to town and country planning, with a view to making its provisions effective without the special Parliamentary procedure necessitated by the existing provisions. Mr. Marples replied that he could not say when this would be possible. [18th November.

Letting Agencies

Mr. Marples said he has passed on to the police information and complaints which he had received with regard to the conduct of agencies for the letting of flats and houses. They had instigated one prosecution which resulted in two men being sent to prison for eighteen months and another prosecution was immediately pending. Some other cases were still under police inquiry. [18th November.

Copyright Committee (Report)

Mr. James Hudson asked whether the Minister was aware that the report of the Copyright Committee had drawn attention to the extreme confusion of the law concerning copyright and the necessity for a new codification. Mr. Strauss said the report was being carefully considered, but no decision had yet been taken regarding legislation to give effect to its recommendations. [20th November.

Home Workers' Schemes

Mr. Norman Dodds asked whether the Minister knew that the fraud squad of Scotland Yard had been amazed to find hundreds of home workers' schemes in the country and asked whether, to protect the very poor and the old, he would introduce legislation for such schemes to be licensed. Mr. Strauss said the Government would consider carefully whether legislation was desirable and practicable, but the existing criminal law was not without its resources. [20th November.

Sheep-worrying

Sir Thomas Dugdale said that civil proceedings for damages could be taken against the owners of dogs that injured sheep. Such dogs might also be dealt with as dangerous dogs under the Dogs Act and ordered by a court to be kept under proper control or destroyed. [20th November.

Registered Clubs

Sir David Maxwell Fyfe stated that, as it was the Government's intention to allow reg. 55c to lapse, he would keep in view the possibility of permanent legislation to strengthen the law relating to registered clubs, but he would hold out no prospect of early legislation on this difficult and controversial subject. [20th November.

Leasehold Committee Report (Evidence)

Asked by Mr. Llewellyn whether he would publish the evidence given to the Leasehold Committee, the Attorney-General said that he did not think the cost could be justified. [20th November.

Unlit Vehicles (Parking, London)

The Home Secretary said that the Commissioner of Metropolitan Police had given consent to vehicles standing without lights at certain authorised street parking places. As regards the lighting of vehicles standing elsewhere, the police had a duty to enforce the law, and while they carried out this duty with discretion, too great a latitude would be likely to result in increased and indiscriminate parking of unlit vehicles throughout the hours of darkness. [20th November.

STATUTORY INSTRUMENTS

Act of Sederunt (Rules of Court Amendment), 1952. (S.I. 1952 No. 1980 (S.105).)

Baking Wages Council (Scotland) Wages Regulation Order, 1952. (S.I. 1952 No. 1964.) 8d.

Bethnal Green (Councillors and Wards) Order, 1952. (S.I. 1952 No. 1966.)

Bricks (Control) (Revocation) Order, 1952. (S.I. 1952 No. 1996.)

Linen and Cotton Handkerchief and Household Goods and Linen Piece Goods Wages Council (Great Britain) Wages Regulation Order, 1952. (S.I. 1952 No. 1990.) 6d.

Load Line (Amendment) Rules, 1952. (S.I. 1952 No. 1958.) 5d.

London-Edinburgh-Thurso Trunk Road (Knockinnon and Other Diversions) Order, 1952. (S.I. 1952 No. 1971.) 5d.

London Traffic (Prescribed Routes) (No. 23) Regulations, 1952. (S.I. 1952 No. 1975.)

Merchant Shipping (Accepted Safety Convention Certificates) Regulations, 1952. (S.I. 1952 No. 1954.) 6d.

Merchant Shipping (Closing of Openings in Hulls and in Watertight Bulkheads) Rules, 1952. (S.I. 1952 No. 1953.) 5d.

Merchant Shipping (Construction) Rules, 1952. (S.I. 1952 No. 1948.) 2s. 8d.

Merchant Shipping (Dangerous Goods) Rules, 1952. (S.I. 1952 No. 1977.) 6d.

Merchant Shipping (Direction-Finders) Rules, 1952. (S.I. 1952 No. 1957.) 8d.

Merchant Shipping (Fees) Regulations, 1952. (S.I. 1952 No. 1978.) 8d.

Merchant Shipping (Fire Appliances) Rules, 1952. (S.I. 1952 No. 1950.) 1s. 2d.

Merchant Shipping (Grain) Rules, 1952. (S.I. 1952 No. 1959.) 6d.

Merchant Shipping (Life-Saving Appliances) Rules, 1952. (S.I. 1952 No. 1949.) 1s. 5d.

Merchant Shipping (Musters) Rules, 1952. (S.I. 1952 No. 1951.) 5d.

Merchant Shipping (Pilot Ladders) Rules, 1952. (S.I. 1952 No. 1952.)

Merchant Shipping (Radio) Rules, 1952. (S.I. 1952 No. 1956.) 1s. 8d.

Merchant Shipping (Safety Convention) (Transitional Provisions) Regulations, 1952. (S.I. 1952 No. 1955.)

Draft **Metropolitan Police** Staffs (Increase of Superannuation Allowances) Order, 1952.

Retention of Cables over and under Highways (Soke of Peterborough) (No. 1) Order, 1952. (S.I. 1952 No. 1972.)

Rubber Manufacturing Wages Council (Great Britain) Wages Regulations Order, 1952. (S.I. 1952 No. 1976.) 8d.

Safeguarding of Industries (Exemption) (No. 6) Order, 1952. (S.I. 1952 No. 1986.)

Sand and Gravel (Returns) (Revocation) Order, 1952. (S.I. 1952 No. 1995.)

Stopping up of Highways (East Sussex) (No. 3) Order, 1952. (S.I. 1952 No. 1970.)

Stopping up of Highways (Lancashire) (No. 7) Order, 1952. (S.I. 1952 No. 1969.)

Stopping up of Highways (Plymouth) (No. 3) Order, 1952. (S.I. 1952 No. 1967.)

Stopping up of Highways (Plymouth) (No. 4) Order, 1952. (S.I. 1952 No. 1968.)

Town and Country Planning Minerals Direction, 1952. (S.I. 1952 No. 1973.)

Trading with the Enemy (Enemy Territory Cessation) (Japan) Order, 1952. (S.I. 1952 No. 1989.) As to this order, see *ante*, p. 767.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. P. H. LAYTON has been appointed Recorder of the Borough of Smethwick.

Mr. ALAN BROOK, deputy Town Clerk of Wallasey, has been appointed Town Clerk of Crewe.

Mr. G. G. BURKITT has been appointed Clerk to Oxfordshire County Council.

Personal Notes

Alderman D. Galton, five times Mayor of Christchurch, completed on 14th November sixty years of service with Messrs. D'Angibau & Malim, solicitors, of Boscombe.

Mr. T. H. Kevill, solicitor, of Chorley, and his wife celebrated their golden wedding on 18th November.

Tribute was paid on 19th November to Judge B. R. Rice-Jones, presiding at Huddersfield County Court for the last time before taking up his new appointment in the Croydon district, by Mr. B. M. Schofield, President of the Huddersfield Law Society, Mr. J. D. Eaton Smith and the Registrar, Mr. G. S. Charlesworth, on behalf of the county court staff.

Miscellaneous

L.C.C. DEVELOPMENT PLAN INQUIRY

Objections relating to Paddington and St. Marylebone will begin to be heard at 10.15 a.m. on Monday, 1st December, at the inquiry into objections to the development plan for the County of London.

SOCIETIES

Mr. Ernest Vosper has been elected President and Mr. David F. Nash Vice-President of PLYMOUTH INCORPORATED LAW SOCIETY.

At the annual general meeting of the BROMLEY AND DISTRICT LAW SOCIETY, on 29th October, 1952, Mr. J. W. Willett, who served as President for part of the past year upon the death of Mr. C. E. Staddon, was re-elected President and the following officers were also elected: Vice-Presidents, Mr. R. S. Miller and Mr. E. Bryden Besant; Treasurer, Mr. C. J. de S. Root; Hon. Secretary, Mr. A. J. Harper.

The annual dinner of the BRADFORD INCORPORATED LAW SOCIETY was held at the Victoria Hotel, Bradford, on Friday, 7th November, 1952, and was attended by some 160 members and guests. Speakers included Mr. D. L. Bateson, C.B.E., M.C. (President of The Law Society), who with Mr. H. Duxbury (President of the Bradford Society) responded to the dual toast of "The Law Society and Bradford Incorporated Law Society," proposed by Mr. J. Stanley Snowden (Recorder of Scarborough). The toast to "The City and Professions of Bradford," submitted by the Lord Mayor of Bradford (Alderman John Shee, O.B.E., J.P.), was responded to by Mr. C. A. Harrison, O.B.E., F.C.A. (President of the Leeds, Bradford & District Incorporated Accountants' Society). His Honour Judge B. R. Rice-Jones and Mr. B. M. Schofield (President of the Huddersfield Incorporated Law Society) replied to the toast of "The Guests," proposed on behalf of the members by Mr. J. A. W. Smith (Senior Vice-President).

The SOLICITORS' ARTICLED CLERKS' SOCIETY are holding their annual dinner and dance at The Law Society's Hall, Chancery Lane, W.C.2, on Thursday, 4th December, 1952, at 7 p.m. Details and tickets from Mr. G. Hodson, S.A.C.S., c/o Law Society's Hall. The Society are being honoured by the presence of the Master of the Rolls (Sir Raymond Evershed), the President of The Law Society and many other prominent members of the profession on this occasion.

At the annual general meeting of the Society held on 20th November the following officers and committee were elected: President, Eric Lewis; Vice-President, Mrs. Eva Crawley; Committee: (London members) Miss M. Calderon, Miss M. L. Froelich, *Geoffrey Hellings, *John Lickfold, *Geoffrey Pearce, Paul Rose, *Miss A. Saint, *Sean Stephens, Nowell Watkins, *Neil Whitlock; (country members) *Arthur Braham, *Peter Groom, *Michael Lewis.

* New members.

LOCAL GOVERNMENT LEGAL SOCIETY

ANNUAL MEETING AND LUNCHEON

The fifth annual meeting of the Local Government Legal Society was held at The Law Society's Hall, Chancery Lane, W.C.2, on Saturday, 8th November, 1952. At the morning session Mr. B. Keith-Lucas, Faculty Fellow of Nuffield College and Senior Lecturer in Local Government at Oxford University, gave a paper entitled "The Historical Background of Local Government Law." At the luncheon which followed, Sir Bernard Blatch, M.B.E., a member of the Council of The Law Society, proposed the toast of "The Local Government Legal Society," to which Mr. F. Scott-Miller, the Chairman, responded. Mr. J. K. Boynton, M.C., proposed the toast of "The Visitors," and Mr. T. G. Lund, C.B.E., Secretary of The Law Society, responded on behalf of the guests, amongst whom were also the President of the Society of Town Clerks (Mr. W. H. Bentley), the Secretary of the Association of Municipal Corporations (Mr. G. H. Banwell), the Deputy Secretary of the County Councils Association (Mr. R. Meyric Hughes) and the Chairman and Hon. Secretary of the Civil Service Legal Society. At the annual meeting in the afternoon the following officers were appointed for the ensuing year: Chairman, Mr. S. Holmes (Assistant Town Clerk, Liverpool); Deputy Chairman, Mr. E. R. West (Deputy Clerk, Uxbridge Urban District Council); Treasurer, Mr. J. K. Boynton, M.C. (Deputy Clerk, Berkshire County Council). Mr. J. D. Schooling, T.D. (Senior Assistant Solicitor, Worcestershire County Council), was re-appointed Hon. Secretary. It was reported that the membership stood at 385.

PRINCIPAL ARTICLES APPEARING IN VOL. 96

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